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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 56, No. 192

Thursday, October 3, 1991

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

50058

Federal Register
Vol. 56, No. 192
Thursday, October 3, 1991

Presidential Documents

Title 3—

The President

Proclamation 6344 of October 1, 1991

White Cane Safety Day, 1991

By the President of the United States of America

A Proclamation

Utilized by individuals who are blind to enhance their mobility and independence, the white cane is a widely recognized symbol of determination and achievement. By employing this simple device, thousands of Americans with visual impairments are able to navigate safely and freely through their environment, thereby leading fuller, more productive lives.

During our annual observance of White Cane Safety Day, we not only celebrate the accomplishments of those who use the white cane but also renew our commitment to removing the physical and attitudinal barriers that have, in the past, impeded the advancement of Americans with disabilities. This commitment underlies our efforts to implement the provisions of the Americans with Disabilities Act of 1990, which prohibits discrimination against persons with disabilities in many areas of daily life, including employment, public accommodations, telecommunications, and transportation.

Of course, one of the most important keys to opportunity in our society is a high-quality education. Accordingly, AMERICA 2000, our strategy for achieving our National Education Goals, is designed to ensure that every American has access to a world-class education.

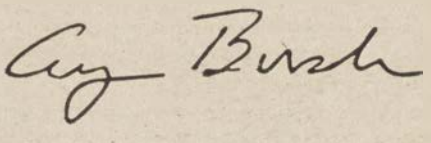
For persons who are blind, equality in education begins before preschool and extends beyond the traditional classroom. That is, parents, teachers, public officials, and other concerned Americans must work together to promote school readiness for the blind, as well as access to on-the-job training and other educational opportunities.

On this occasion, as we reflect on the white cane and all that it symbolizes, let us reaffirm, once again, our determination to ensure equal opportunity for all Americans—including persons who are visually impaired.

The Congress, by Joint Resolution approved October 6, 1964, authorized the President to designate October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 15, 1991, as White Cane Safety Day. I encourage all Americans to observe this day with appropriate programs and activities, in recognition of the achievements of those individuals who use the white cane.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-24036
Filed 10-2-91; 9:16 am]
Billing code 3195-01-M

Presidential Documents

Memorandum of October 1, 1991

Annual Determination on Steel Industry Modernization

Memorandum for the United States Trade Representative

Section 806 of the Steel Import Stabilization Act (19 U.S.C. 2253 note) requires that I make an annual affirmative determination that specified conditions have been met by the domestic steel industry to justify continuation of authority under Section 805 to enforce steel restraint agreements. The attached *Report of the President under the Steel Import Stabilization Act* and the report prepared at my direction by the United States International Trade Commission, *Annual Survey Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize,* enumerate the actions taken by the domestic industry consistent with an affirmative determination under section 806.

Based on this information, I hereby make an affirmative determination for the final annual period (October 1, 1990–September 30, 1991) that during such period:

(A) The major companies of the steel industry, taken as a whole, have—

(i) committed substantially all of their net cash flow from steel product operations for the purposes of reinvestment in, and modernization of, that industry; and

(ii) taken sufficient action to maintain their international competitiveness;

(B) each of the major companies experiencing positive net cash flow committed not less than 1 percent of net cash flow to the retraining of workers; and

(C) the enforcement authority provided under section 805 remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

You are hereby authorized and directed to report this determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. This memorandum shall be published in the **Federal Register**.

George Bush

[FR Doc. 91-24059
Filed 10-2-91; 9:41 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 192
Thursday, October 3, 1991

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1405-91; AG Order No. 1531-91]

Application for the Exercise of Discretion Under Section 212(c) of the Immigration and Nationality Act; Aggravated Felons

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends 8 CFR part 212 to implement sections 511 and 545 of the Immigration Act of 1990, Public Law No. 101-649, 104 Stat. 4978, 5052, 5061, (1990) (IMMACT), by providing that a lawful permanent resident applying for advance permission to enter the United States under section 212(c) of the Immigration and Nationality Act, ch. 477, 66 Stat. 163 (1952), as amended, (Act), may not be granted such permission if he or she has been convicted of an aggravated felony and has served a term of imprisonment of at least five (5) years. This rule also provides that certain specified aliens are ineligible for discretionary relief under section 212(c) of the Act for a period of five years from the date of the barring act, if the alien fails to: Appear for deportation; voluntarily depart; attend a proceeding under section 242 of the Act; or, appear at an asylum hearing. This interim rule is necessary to ensure implementation of and regulatory compliance with IMMACT.

DATES: This interim rule is effective October 3, 1991. Interested persons are invited to submit written comments on or before November 4, 1991.

ADDRESSES: Written comments should be submitted in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. Please include INS number 1405-91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Cindy N. Lechner, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, telephone (202) 514-3946.

SUPPLEMENTARY INFORMATION: Prior to November 29, 1990, there was no bar to the Attorney General's exercise of discretion to waive qualifications for admission into the United States in the case of an alien who has been convicted of an aggravated felony. Then, Congress amended section 212(c) of the Act to prevent an alien who has been convicted of an aggravated felony as defined in section 101(a)(43) of the Act, and who has served a term of imprisonment of at least five (5) years, from being granted a waiver. This limitation applies to all exercises of discretion under section 212(c) of the Act occurring after November 29, 1990. In accordance with this limitation, this interim rule specifies the conditions under which it is permissible for the Attorney General to exercise discretion by granting an application by an alien for advance permission to return to an unrelinquished domicile.

As used in section 511(b) of IMMACT, the term "admissions" covers all applications under the Act for section 212(c) relief, whether actually made upon application for admission into the United States or made only after entry. The language of the waiver contained in section 212(c) applies by its terms only to applications for readmission into the United States by inadmissible lawful permanent resident aliens who temporarily proceeded abroad voluntarily. However, the Attorney General has long equated applications for section 212(c) relief which are made during deportation proceedings after entry, with those applications made at the time an alien physically seeks admission into the United States. *Matter of Smith*, 11 I&N Dec. 325 (BIA-1965); *Matter of S-*, 6 I&N Dec. 392 (BIA-1954). This treatment has been accepted and expanded by the courts, and applies even if the alien did not depart the United States after becoming excludable. *Tapia-Acuna* v. *INS*, 640 F.2d 223 (9th Cir. 1981); *Francis* v. *INS*, 532 F.2d 268, 272-73 (2d Cir. 1976). *Accord Matter of Silva*, 16 I&N Dec. 26 (BIA-1976). Thus, under the prevailing interpretation, the phrase "shall apply to admissions" as used in section 511(b) of IMMACT refers to all applications for relief pursuant to section 212(c) of the Act submitted after November 29, 1990, whether at a port of entry or in subsequent proceedings before a district director or Immigration Judge.

Additionally, Congress explicitly recognized the applicability of section 212(c) relief to deportation proceedings when it added section 242B(e)(5) to the Act. Section 545 of IMMACT adds new section 242B to the Act to provide statutory deportation procedures. Section 242B(e) of the Act provides that an alien is ineligible for discretionary relief under section 212(c) of the Act for five years, if that alien becomes the subject of a final order of deportation in absentia, fails to appear under a deportation order, fails to depart voluntarily under section 242(b)(1), or fails to appear for an asylum hearing.

Due to the modification of section 212(c) of the Act, the Immigration and Naturalization Service sees this as an opportunity to revise 8 CFR 212.3 in its entirety in order to provide a more uniform and consistent organization of this section. These changes standardize the presentation of such terms as: Eligibility Requirements, Jurisdiction, Filing Procedures, Decisions, Validity, and Appeals.

The Attorney General's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). It is necessary to implement this interim rule immediately because IMMACT's amendments with respect to aggravated felonies went into effect on November 29, 1990.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, 8 CFR part 212 is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; and 8 CFR part 2.

2. Section 212.3 is revised to read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

(a) *Jurisdiction.* An application for the exercise of discretion under section 212(c) of the Act shall be submitted on Form I–191, Application for Advance Permission to Return to Unrelinquished Domicile, to:

(1) The district director having jurisdiction over the area in which the applicant's intended or actual place of residence in the United States is located; or

(2) The Office of the Immigration Judge if the application is made in the course of proceedings under sections 235, 236, or 242 of the Act.

(b) *Filing of application.* The application may be filed prior to, at the time of, or at any time after the applicant's departure from or arrival into the United States. All material facts and/or circumstances which the applicant knows or believes apply to the grounds of excludability or deportability must be described. The applicant must also submit all available documentation relating to such grounds.

(c) *Decision of the District Director.* A district director may grant or deny an application for advance permission to return to an unrelinquished domicile under section 212(c) of the Act, in the exercise of discretion, unless otherwise prohibited by paragraph (f) of this section. The applicant shall be notified of the decision and, if the application is denied, of the reason(s) for denial. No appeal shall lie from denial of the application, but the application may be renewed before an Immigration Judge as provided in paragraph (e) of this section.

(d) *Validity.* Once an application is approved, that approval is valid indefinitely. However, the approval covers only those specific grounds of excludability or deportability that were described in the application. An application who failed to describe any other grounds of excludability or deportability, or failed to disclose material facts existing at the time of the approval of the application, remains excludable or deportable under the previously unidentified grounds. If at a later date, the applicant becomes subject to exclusion or deportation based upon these previously unidentified grounds or upon new ground(s), a new application must be filed with the appropriate district director.

(e) *Filing or renewal of applications before an Immigration Judge.* (1) An application for the exercise of discretion under section 212(c) of the Act may be renewed or submitted in proceedings before an Immigration Judge under sections 235, 236, or 242 of the Act, and under this chapter. Such application shall be adjudicated by the Immigration Judge, without regard to whether the applicant previously has made application to the district director.

(2) The Immigration Judge may grant or deny an application for advance permission to return to an unrelinquished domicile under section 212(c) of the Act, in the exercise of discretion, unless otherwise prohibited by paragraph (f) of this section.

(3) An alien otherwise entitled to appeal to the Board of Immigration Appeals may appeal the denial by the Immigration Judge of this application in accordance with the provisions of § 3.36 of this chapter.

(f) *Limitations on discretion to grant an application under section 212(c) of the Act.* A district director or Immigration Judge shall deny an application for advance permission to enter under section 212(c) of the Act if:

(1) The alien has not been lawfully admitted for permanent residence;

(2) The alien has not maintained lawful permanent resident status in the United States for at least seven consecutive years immediately preceding the filing of the application;

(3) The alien is subject to exclusion from the United States under paragraphs (3)(A), (3)(B), (3)(C), or (3)(E) of section 212(a) of the Act;

(4) The alien has been convicted of an aggravated felony, as defined by section 101(a)(43) of the Act, and has served a term of imprisonment of at least five years for such conviction; or

(5) The alien applies for relief under section 212(c) within five years of the barring act as enumerated in one or more sections of section 242B(e) (1) through (4) of the Act.

Dated: September 20, 1991.

William P. Barr,

Acting Attorney General.

[FR Doc. 91–23813 Filed 10–2–91; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 338

RIN 3064–AA81

Fair Housing

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing fair housing in order to bring certain requirements therein into conformity with the Home Mortgage Disclosure Act ("HMDA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), and implemented by revisions to Regulation C ("Regulation C") adopted by the Board of Governors of the Federal Reserve System ("FRB") on December 11, 1989 (54 FR 51356 (December 15, 1989)). More specifically, the FDIC is revising the home loan application log-sheet ("FDIC log-sheet") currently prescribed by its fair housing regulations in order to conform it to the loan/application register prescribed by Regulation C ("HMDA register" or "HMDA LAR"). Regulation C requires certain insured State nonmember banks (among others) to maintain information regarding home loan applications in a register format. The FDIC's fair housing regulations require certain insured State nonmember banks to maintain information regarding home loan applications in a similar format. As a result, certain insured State nonmember banks (and entities controlled by them) are currently required to keep two largely repetitive registers. This duplication in forms will no longer be required after this final rule is implemented. Instead, institutions subject to the FDIC's log-sheet requirements will be able to satisfy those requirements by maintaining only a HMDA register, provided that (i) data as to race or national origin, sex, and income are recorded for all applicants, and (ii) all the information required is

entered on the HMDA register within 30 calendar days after final disposition of the loan application.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia A. McCormick, Fair Lending Analyst, Office of Consumer Affairs, (202) 898–3538 or call toll-free at 1–800–424–5488, or Valerie J. Best, Counsel, (202) 898–3812, or Adrienne George, Attorney, (202) 898–3743, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background Information

Part 338 of the FDIC's Rules and Regulations is the FDIC's fair housing lending regulation. Part 338 has two main purposes. First, it implements section 805 of title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19), as amended by the Fair Housing Amendments Act of 1988. Second, it implements a substitute monitoring program as permitted by Regulation B, 12 CFR part 202, which itself implements the Equal Credit Opportunity Act of 1974 ("ECOA") (15 U.S.C. 1691–91f). These statutes do not specifically require the compilation of data in a log-sheet format. Nonetheless, the FDIC views the collection of certain information in a log-sheet format as necessary to assist FDIC examiners in conducting the fair housing portion of an examination more effectively. Log-sheets give examiners an overall perspective of a bank's home loan lending activities and save examiners' time. Institutions identified as possibly engaging in unlawful discrimination can then be subjected to an even more comprehensive compliance examination.

Because of the foregoing advantages, § 338.4 currently requires certain FDIC-supervised institutions to compile data regarding home loan applicants in a log-sheet format. The applicants' race or national origin, sex, marital status, and age are entered on the log-sheet. In addition, the type of loan and the case disposition are noted. Finally, identifying information—that is, the name and address of the applicant, the address of the property, and the date of the application—are recorded. The bank must be able to trace each entry on the log-sheet to the relevant application file.

As explained below, Regulation C now requires certain banks to maintain a home loan application register that requires much of the same data as the FDIC log-sheet. Examiners can use the HMDA register as easily as the FDIC log-sheet when conducting the fair housing segment of a compliance examination. No purpose is served by requiring banks to maintain the FDIC log-sheet when similar information is as readily available to the examiner by reference to the HMDA register.

Home Mortgage Disclosure Act

Prior to the enactment of FIRREA, HMDA had required that covered institutions disclose annually their originations and purchases of mortgage and home improvement loans itemized by census tract and type of loan. The Federal Financial Institutions Examination Council ("FFIEC") produced tables based on such data showing aggregate lending patterns in each metropolitan statistical area ("MSA"). In this way, possible instances of "redlining" could be detected.

FIRREA made major revisions to the HMDA. Following the mandate of FIRREA, the FRB, which has rulemaking authority with respect to HMDA, revised Regulation C. Regulation C now requires certain financial institutions to report data on home loan applications, not just on home loan originations and home loan purchases as was formerly the case. In addition, Regulation C now requires certain institutions to report the race or national origin, sex, and income of the applicant or borrower. It does not require institutions to report the marital status and age of the applicant or borrower, however. The data must be presented on a register in the format prescribed by Regulation C.

Description of FDIC Final Rule

In May 1991, the FDIC Board of Directors proposed amending the FDIC's regulations in order to conform the existing FDIC log-sheet to the HMDA register. 56 FR 21335 (May 8, 1991). The FDIC received 25 comments in response to the proposed amendment. As discussed in more detail below, the majority of the comments were supportive of the proposal, commended the FDIC for its action, and urged the FDIC to adopt the regulation in final form as quickly as possible.

After considering the comments received in response to the proposed rule, the FDIC has determined to adopt the proposed rule substantially as published for comment. Minor changes have been made to the final rule for purposes of clarification. Through this final rule, the home loan data required to be displayed in log-sheet format pursuant to present § 338.4(a)(2)(iv) is made identical to that required by Regulation C. Institutions currently required to keep a FDIC log-sheet can now satisfy that requirement by maintaining only the HMDA register, provided that the reporting requirements explained below are satisfied.

Additional Reporting Requirements

Although the FDIC is conforming the format of its log-sheet to that of the HMDA register, it should be noted that the FDIC's reporting requirements will differ from those imposed by Regulation C in two respects: (i) The class of institutions required by the FDIC to record information concerning race or national origin, sex, and income, is broader, and (ii) the FDIC requires the register to be updated on a more timely basis.

Both the FDIC's regulations and HMDA currently require banks to report in log-sheet or register format if the bank has a home or a branch office in a MSA and had total assets exceeding $10 million as of the end of the preceding calendar year. HMDA, however, provides that race or national origin, sex, and income data may, but need not, be collected by an institution with assets on the preceding December 31 of $30 million or less. 12 CFR 203.4(b). As a result of this provision, subject institutions maintain a HMDA register but need not complete that portion of the register concerning race or national origin, sex, and income.

The FDIC is not incorporating into its fair housing lending regulations the Regulation C exemption that allows banks with assets of $30 million or less as of the end of the preceding calendar year to report data on race or national origin, sex, and income at their option. Instead, this final rule continues the FDIC's current requirement that all insured State nonmember banks with an office in a primary metropolitan statistical area ("PMSA") or MSA, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year, report the race or national origin and sex of the applicant. In addition, this final rule requires that such institutions report the income of the applicant. The FDIC is of the opinion that the collection of such information in register format by all insured State nonmember banks with total assets in excess of $10 million and with an office in a PMSA or MSA, would allow for a more efficient compliance examination analysis.

The final rule requires that information reported in register format be kept current to within 30 days of the loan disposition date. At present, part 338 requires each bank to collect information during the initial contact with the applicant. 12 CFR 338.4(a)(2)(iii). The final rule retains this requirement and adds a provision that

all required data must be entered into the register within 30 calendar days after final action is taken on the loan application. In contrast, Regulation C does not specify a time limit for entering the required data on the register, but does require that the register be filed once a year. 12 CFR 203.4(a). The FDIC is of the opinion that the register must be kept up-to-date so that it can be a useful examination tool. Examiners conduct compliance examinations throughout the year. In order to effectively conduct the fair lending portion of these examinations, examiners need to have access to registers that are updated on a more frequent basis that once a year. Also, many banks use the registers for internal review and control. Registers that are continuously maintained will better enable banks to monitor compliance with consumer protection laws and with the bank's own lending policies.

Comment Summary

A. Comments in General

As noted above, the FDIC received 25 comments in response to the proposed amendment. Twenty-four of the comments were from banking-related institutions; one comment was from a consumer group. All of the comments were supportive of the proposal in principle, noting that the proposed amendment would eliminate unnecessary duplication. One commentator wrote: "Eliminating the FDIC Log Sheet in favor of the HMDA Register will ease the current compliance burden of having to maintain two separate and largely repetitive sets of logs. It will also simplify the task of training staff and streamline internal monitoring by having a single, albeit more comprehensive log sheet for housing related loans." A multi-bank holding company noted: "As a number of these state non-member banks already report under the Home Mortgage Disclosure Act, they have heretofore been subject to duplicative reporting requirements with regard to their home mortgage activities. The proposed amendments, as we understand them, would eliminate this duplication of effort and permit these banks to report their mortgage activities in the same manner and using the same automated systems as our other banks. This clearly will result in cost savings to those banks, thereby enhancing their ability to remain competitive and financially sound." A state banking association said: "[T]he proposal provides the state non-member banks an opportunity to be placed on equal grounds with other financial institutions that do not have to maintain two separate reporting functions."

The majority of commentators agreed with the FDIC's conclusion that the proposed amendment would not be detrimental to the FDIC's ongoing efforts to enforce the civil rights and consumer protection laws within its jurisdiction. A bank holding company noted: "We concur with the FDIC staff analysis which supports the view that the HMDA Register will be an effective substitute for, and even an improvement over, the existing FDIC Log Sheet. Clearly, the HMDA Register requires lenders to provide significantly more detail on loan applications than the current FDIC Fair Housing Log. With the changes in HMDA brought about by the passage of FIRREA, we feel the usefulness of maintaining the current Fair Housing Logs going forward is largely diminished." A bank wrote that "the wealth of information provided by Home Mortgage Disclosure Act Loan/Application Registers can aptly assist FDIC examiners in conducting effective fair housing lending examinations and help them to identify and potentially discriminating patterns."

B. Comments Regarding 30-day Reporting Requirement

Although generally supportive of the proposed rule, three bank holding companies urged the FDIC to extend the 30-day deadline for reporting data. One bank holding company wrote: "It is our contention that requiring banks to update the HMDA Register no less frequently than every 30 days will be very burdensome to many banks. Currently, [our] bank subsidiaries * * * rely upon quarterly reports generated by an automated system to fully compile this data. Therefore, the HMDA Register can be updated no more frequently than quarterly using this system. Requiring banks to update the HMDA Register at 30 day intervals could necessitate costly reprogramming to such automated loan monitoring systems." The second holding company also used a quarterly reporting system for purposes of compiling data for HMDA. They complained that "the requirement to generate a monthly register will result in significant increased expense without materially improving a bank's monitoring process." The third holding company questioned whether data collected on a monthly basis would be reliable. In contrast, a major trade association and a bank supported the 30-day reporting period. The trade association expressed the believe that "most banks do currently continuously maintain the HMDA loan register and that this part of the proposed rule will not impose a significant additional burden." The bank wrote: "Completion of the HMDA log takes only a few minutes and the FDIC requirements for timely entry of information is a good one. Information entered while the application is current is going to be accurate; waiting any length of time could lead to oversight, errors or omissions."

The FDIC agrees that delay in entering the required information could lead to inaccurate results. Banks that do not compile data on a routine basis find it difficult to later reassemble the required data. Consequently, the data submitted by such banks may be inaccurate. In addition, such banks run the risk of violating HMDA reporting requirements because they cannot reassemble the required data in time to meet the annual reporting requirement. While the quarterly reporting system described by the commentators is better than a yearly reporting system, the FDIC continues to believe that a 30-day reporting requirement is easily complied with and will lead to more accurate results. It should also be noted that, consistent with Regulation B, current FDIC regulations require banks to gather information as to race or national origin and sex as well as identifying information, when the bank receives the loan application. 12 CFR 202.13(a); 12 CFR 338.4(a)(2)(iii)(A). Since banks are required to obtain such information when the bank receives the loan application, it should not be difficult to routinely enter the information onto a register. As noted by one of the commentators quoted above, it is believed that the majority of banks already continuously maintain the HMDA loan register. Finally, as explained previously, registers that are continuously maintained will enable banks to monitor compliance with consumer protection laws and with the bank's own lending policies, and also provide examiners with access to current information. For these and other reasons, this final rule requires the data to be entered into the register within 30 calendar days after final action is taken on the loan application.

C. Comments Regarding Deletion of FDIC Exemption

Current FDIC regulations provide that a covered bank which had total assets of $50 million or less as of December 31 of the preceding calendar year and also received fewer than 25 home loan applications during that calendar year is not required to keep the FDIC log-sheet. 12 CFR 338.4(a)(2)(iv). In the proposed

rule, the FDIC suggested that this exemption be deleted. The FDIC received three letters that addressed this specific issue. One bank wrote in support of the proposal, stating: "Those banks are important to their communities and their 10 or 20 loan applications (and their disposition) could be as significant as 1,000 loan applications at a large bank." Two trade associations objected to the proposed deletion. They argued that if the exemption were deleted, the burden on small banks would be increased. Their argument overlooks the fact that such banks are already required by Regulation C to maintain a HMDA register (12 CFR 203.3(a)). In other words, those institutions that are currently exempt from maintaining a FDIC log-sheet by virtue of this exemption are required by Regulation C to maintain a HMDA register. The FDIC has determined to delete this exemption in order to make the FDIC's regulations more consistent with the requirements of Regulation C. Deletion of this exemption will not materially increase the recordkeeping burden for covered banks because they already maintain a HMDA register.

Regulation C provides that covered institutions with assets on the preceding December 31 of $30 million or less may, but need not, collect data as to race or national origin, sex, and income, for loans purchased, applications received, or loans originated. 12 CFR 203.4(b)(2). As explained above, the FDIC suggested in the proposed rule that it would not incorporate this exemption into its fair housing lending regulations. Instead, the FDIC suggested that it would require all insured State nonmember banks with an office in a PMSA or MSA, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year, to report the race or national origin, sex, and income of the applicant. A major trade association and a holding company objected to the elimination of the option to report such information. The FDIC continues to believe, however, that the collection of such information in register format by all insured State nonmember banks with total assets in excess of $10 million and with an office in a PMSA or MSA, would allow for a more efficient compliance examination analysis. Since these institutions are already required to maintain a HMDA register, and since they are already required to collect such data pursuant to Regulation B, the FDIC is of the opinion that this additional recordkeeping requirement will not be burdensome. We note here that banks are exempt from the requirements of Regulation C—they are not required to maintain a register—if on the preceding December 31: (1) The institution had neither a home office nor a branch office in an MSA; or (2) the bank's total assets were $10 million or less. 12 CFR 203.3(a). The FDIC's regulations do not affect this exemption. Contrary to one commentator's views, State nonmember banks that are not required by Regulation C to maintain a HMDA register, are not required by this final rule to maintain a FDIC log-sheet.

D. Comments Regarding Marital Status and Age Recordkeeping Requirements

The current FDIC log-sheet and the HMDA register differ in one material respect: Marital status and age are reported on the current FDIC log-sheet but not on the HMDA register. In the proposed rule, the FDIC suggested that it would delete its requirement that marital status and age be recorded in a register format. This proposal was based on the fact that the FDIC wished to conform its current log-sheet to the HMDA register. The FDIC expressed the view that deletion of this requirement would not be detrimental to its efforts to monitor compliance with its fair housing lending regulations because this information remains available from loan applications on file at the institution. Further, the FDIC has received almost no housing-related complaints alleging discrimination on the basis of marital status or age over the past several years.

The FDIC received two comments as to this specific issue. A major banking association said: "We agree with the FDIC that the dropping of reporting on marital status and age from the register format should not be significant, especially since that information would still be available in the records of the institution in the event a complaint should be received." The second commentator objected to this change. This commentator stated: "Without this information, it will be impossible for the FDIC examiners to determine whether or not FDIC-regulated institutions are in full compliance with ECOA." This commentator suggested that the FDIC amend the format of the register and require institutions to include information on age and marital status on the form that institutions use for HMDA. Alternatively, this commentator asked that the FDIC revise its examination procedures, suggesting that the FDIC reviews too few loan files during an examination.

After having fully considered this issue, the FDIC continues to believe that the advantages of utilizing the HMDA register format outweigh the disadvantages. As outlined in the proposed rule, the FDIC wishes to substitute the HMDA register for its current log-sheet, not only because it will eliminate duplicative recordkeeping requirements, but because the HMDA register will provide more detailed information. For example, the HMDA register will contain more information regarding the type of loan (*i.e.*, conventional, government-insured, or government-guaranteed loan); the disposition of the loan; the applicant's income; and loans purchased. Further, unlike the information on the FDIC's current log-sheets, data derived from HMDA registers are aggregated by the FFIEC and the aggregated data are then made available to the public. More specifically, the FFIEC produces tables for each MSA showing lending patterns according to location, age of housing stock, income level, sex, and racial characteristics. The FFIEC also generates disclosure statements for each institution. These tables and disclosure statements will be made available to the public at central data depositories located in each MSA. In addition, each reporting institution must make its disclosure statement available to the public.

Finally, the FDIC is not so rigid in its examination procedures that it reviews a fixed number of loan files in all banks, regardless of circumstances. Rather, the parameters of the fair housing segment of a compliance examination are determined on a case-by-case basis.

Because of the advantages of using the HMDA register, the FDIC has determined to conform the format of its log-sheet to the format of the HMDA register without change.

E. Other Comments

A major trade association urged the FDIC to delete the provision that permits the FDIC to require any State nonmember bank to maintain a loan application register. The FDIC is retaining this provision so that it can require that data be recorded in a register format as circumstances warrant.

Two commentators asked that the FDIC clarify the treatment of refinancings. In conjunction with this final rule, the FDIC is updating its Note to 12 CFR part 338. (The Note is not reprinted in the Code of Federal Regulations but is published in the FDIC's loose-leaf service.) The Note sets forth background information, including answers to the most commonly asked questions concerning the FDIC's fair housing lending regulations. The FDIC has added to the Note a section

concerning the treatment of refinancings.

By means of this final rule, the FDIC is deleting all references to a "CMSA that is not comprised of designated PMSAs" contained in 12 CFR part 338. After consultation with Office of Management and Budget staff and U.S. Department of Commerce, Bureau of the Census staff, the FDIC has concluded that this phrase is obsolete. See, 55 FR 12154 (March 30, 1990). The FDIC also wishes to avoid any confusion between the requirements of Regulation C and the FDIC's fair housing lending regulations: Regulation C refers to MSAs and PMSAs (collectively referred to in Regulation C as MSAs). 12 CFR 203.2(h). This change neither increases nor decreases the number of institutions subject to the recordkeeping requirements set forth in 12 CFR part 338.

Part 338 Reorganized

As explained above, § 338.4 of the FDIC's present fair housing lending regulations is, in part, a substitute monitoring program adopted under § 202.13(d) of Regulation B of the FRB. Furthermore, present §§ 338.2 and 338.3 implement title VIII. Consequently, the definitions currently employed in part 338 are based on the definitions used in Regulation B and title VIII. With the implementation of Regulation C and the HMDA register, however, the relevant definitions as to the register are those contained in Regulation C. In some instances, the same term (for example, "dwelling") is used in title VIII, Regulation B, and/or Regulation C, but is differently defined in each of these sources. As a result, home loans purchased and home improvement loans are required by Regulation C to be recorded on the HMDA register but are not covered by the recordkeeping requirements of Regulation B. Likewise, loans for multifamily dwellings (that is, dwellings for five or more families) are not covered by the Regulation B recordkeeping requirements, but are covered by Regulation C and so must be recorded on the HMDA register. On the other hand, loans for vacant land are covered by title VIII and the nondiscriminatory advertising and Equal Housing Lender Poster requirements, but are not subject to recordkeeping requirements. The FDIC is reorganizing part 338 in order to avoid any confusion that could be caused by the different definitions employed in title VIII, Regulation B, and Regulation C.

Paperwork Reduction Act

This final regulation contains two collections of information subject to approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The first collection is imposed on State nonmember banks by the FRB's Regulation B (Equal Credit Opportunity). This recordkeeping requirement, found at § 338.7, has been approved through August 31, 1992, but the OMB in accordance with the requirements of the Paperwork Reduction Act under control number 3064–0085. The estimated annual recordkeeping burden for this collection is summarized as follows:

Number of Respondents: 8,400
Number of Responses per Respondent: 37.6
Total Annual Responses: 316,122
Hours per Response: 1
Total Annual Burden Hours: 316,122

This collection would be unchanged by this final rule, although the section in which it appears has been renumbered from § 338.4 to § 338.7.

In the second collection, found at § 338.8, the FDIC is revising its fair housing lending recordkeeping requirements in order to bring them into conformity with the HMDA, as amended by FIRREA, and implemented by Regulation C of the FRB. Upon adoption of this final rule, banks subject to both the FDIC's log-sheet requirements and the FRB's HMDA register requirements will be able to satisfy those requirements by maintaining only the HMDA register on a timely basis. The estimated effect of this change is displayed in the table below.

	Current approved burden	Proposed new burden
Number of respondents	9,322	3,500
Number of responses per respondent	1	1
Total annual responses	9,322	3,500
Hours per response	7.9	23.7
Total annual burden hours	73,701	82,950

The revisions to the FDIC's log-sheet contained in this final rule were submitted to the OMB for review pursuant to section 3504(h) of the Paperwork Reduction Act and have been approved for use through July 30, 1994, under control number 3064–0046. Under the earlier Part 338 some State nonmember banks were required to maintain both a HMDA register to comply with Regulation C, and a log-sheet to comply with part 338. By eliminating that duplicative recordkeeping requirement, this final rule will reduce the burden imposed on those State nonmember banks by an estimated total of 73,701 hours annually.

Comments concerning the accuracy of these burden estimates, and suggestions for reducing the burdens, should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064–0046), Paperwork Reduction Project (3064–0085), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–451, 550 17th Street, NW., Washington, DC 20429.

Regulatory Flexibility Act

The FDIC's Board of Directors has determined that the final rule will not have a significant adverse economic impact on a substantial number of small entities because it will eliminate the need to maintain two largely repetitive forms, as described above, and so reduce the information-recording burden on affected banks.

List of Subjects in 12 CFR Part 338

Advertising, Banks, Banking, Civil rights, Credit, Fair housing, Mortgages, Reporting and recordkeeping requirements, Signs and symbols.

For the reasons set out in the preamble, the FDIC hereby amends title 12, part 338 of the Code of Federal Regulations, as follows:

PART 338—FAIR HOUSING

1. The authority citation for part 338 is revised to read as follows:

Authority: 12 U.S.C. 1817, 1818, 1819, 1820(b); 12 U.S.C. 2801 *et seq.*; 15 U.S.C. 1691 *et seq.*; 42 U.S.C. 3605, 3608; 12 CFR Part 202; 12 CFR Part 203; 24 CFR part 110.

2. Section 338.1 is revised to read as follows:

§ 338.1 Purpose.

The purpose of this subpart A is to provide guidance on nondiscriminatory advertising, and, in addition, set forth the text of the Equal Housing Lender Poster that must be publicly displayed by insured State nonmember banks. This subpart A enforces provisions contained in section 805 of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 ("Fair Housing Act"), as amended by the Fair Housing Amendments Act of 1988, and implemented by rules and regulations enacted by the United States Department of Housing and Urban Development, 24 CFR parts 109 and 110.

§ 338.4 [Redesignated as § 338.7]

3. Section 338.4 is redesignated as § 338.7 and amended by revising paragraph (a)(1) introductory text, (a)(1)(i) heading, (a)(1)(i)(B)(*3*), (a)(2) introductory text, (a)(2)(i) heading, and (a)(2)(i)(B)(*3*), by redesignating footnote 2 in paragraph (a) as footnote 1, by redesignating footnote 3 in paragraph (a)(2)(ii) as footnote 2, by removing paragraph (a)(2)(iv); by revising paragraphs (c) and (d); by removing paragraphs (f) and (g), and by revising the parenthetical at the end of the section, as follows:

§ 338.7 Recordkeeping requirements.

(a) *Records to be retained.*[1] (1) A bank which has no office located in a primary metropolitan statistical area ("PMSA") or a metropolitan statistical area ("MSA"), as defined by the Office of Management and Budget, or which has total assets as of December 31 of the preceding calendar year of $10 million or less, shall request and retain the following information on home purchase loan applications (excluding applications received by telephone) for dwellings, occupied or to be occupied by the application as a principal residence, and containing one to four units:

(i) *Data on home purchase loan applicants.*

* * * * *

(B) * * *

(*3*) Location (street address, city, State, and zip code) of subject property.

* * * * *

(2) A bank which has an office in a PMSA or MSA, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year, shall request the following information on home purchase loan applications (excluding applications received by telephone) for dwellings, occupied or to be occupied by the applicant, and containing one to four units:

(i) *Data on home purchase loan applicants.*

* * * * *

(B) * * *

(*3*) Location (street address, city, State, and zip code) of subject property.

* * * * *

(c) *Record retention.* Each bank shall retain the records required by this section for a period of not less than 25 months after the bank notifies an applicant of action taken on an application. This requirement also applies to records of home purchase loans which are originated by the bank and subsequently sold. The Federal Deposit Insurance Corporation may by written notice extend the retention period.

(d) *Substitute system.* The recordkeeping provisions of § 338.7 constitute a substitute monitoring program adopted under § 202.13(d) of Regulation B of the Board of Governors of the Federal Reserve System (12 CFR 202.13(d)). A bank collecting the data in compliance with § 338.7 will be in compliance with the recordkeeping requirements of § 202.13 of Regulation B.

* * * * *

(Approved by the Office of Management and Budget under control number 3064–0085)

§ 338.3 [Redesignated as § 338.4]

4. Section 338.3 is redesignated as § 338.4.

§ 338.2 [Redesignated as § 338.3]

5. Section 338.2 is redesignated as § 338.3 and paragraph (a)(1) is revised to read as follows:

§ 338.3 Nondiscriminatory advertising.

(a) * * *

(1) With respect to written and visual advertisement, this requirement may be satisfied by including in the advertisement a facsimile of the logotype with the Equal Housing Lender legend contained in the Equal Housing Lender Poster prescribed in § 338.4(b).

* * * * *

6. A new § 338.2 is added to read as follows:

§ 338.2 Definitions applicable to subpart A of this part.

For purposes of subpart A of this part:

(a) *Bank* means an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *Handicap* means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) a record of having such an impairment; or

(3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(d) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

§ 338.5 [Redesignated as § 338.9]

7. Section 338.5 is redesignated as § 338.9 and the last sentence is revised to read as follows:

§ 338.9 Mortgage lending of a controlled entity.

* * * The written agreement shall provide that the controlled entity shall:

(a) Comply with the requirements of §§ 338.3, 338.4 and 338.7, and, if otherwise subject to Regulation C of the Board of Governors of the Federal Reserve System (12 CFR part 203), § 338.8;

(b) Open its books and records to examination by the Federal Deposit Insurance Corporation; and

(c) Comply with all instructions and orders issued by the Federal Deposit Insurance Corporation with respect to its home loan practices.

8. A new § 338.5 is added to read as follows:

§ 338.5 Purpose.

The purpose of this subpart B is two-fold. First, this subpart B requires insured State nonmember banks to collect information about the applicant's race and other personal characteristics in applications for home loans. In some instances, additional information concerning the applicant, the loan, and the subject property must be collected. Such information is collected in order to monitor an institution's compliance with the Equal Credit Opportunity Act of 1974 (15 U.S.C. 1691–91f), and serves as a substitute monitoring program as permitted by Regulation B of the Federal Reserve System (12 CFR 202.13(d)). Second, this subpart B notifies banks of their duty to maintain a register of home loan applications pursuant to Regulation C of the Federal Reserve System (12 CFR part 203), requires that the register be updated on a timely basis, and requires covered institutions to record

[1] These records are to be retained for the purpose of monitoring compliance and may not be used for the purpose of extending or denying credit or fixing credit terms where prohibited by law.

data as to race or national origin, sex, and income for all applicants. The register format required by Regulation C is shown in appendix A to subpart B of this part. Appendix B to subpart B of this part refers banks to the instructions contained in Regulation C for completion of the register.

9. A new § 338.6 is added to read as follows:

§ 338.6 Definitions applicable to subpart B of this part.

For purposes of subpart B of this part—

(a) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested.

(b) *Bank* means an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(c) *Dwelling* means a residential structure whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominum, cooperative unit, or mobile or manufactured home.

(d) *Home improvement loan* means any loan that:

(1) Is stated by the borrower (at the time of the loan application) to be for the purpose of repairing, rehabilitating, or remodeling a dwelling; and

(2) Is classified by the financial institution as a home improvement loan.

(e) *Home purchase loan* means any loan secured by and made for the purpose of purchasing or refinancing a dwelling.

10. A new § 338.8 is added to read as follows:

§ 338.8 Compilation of loan data in register format.

(a) A bank which has an office in a PMSA or MSA, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year, shall collect data regarding applications for, and originations and purchases of, home purchase loans and home improvement loans for each calendar year. These data shall be presented on a register in the format prescribed in appendix A to subpart B of this part. Data shall be collected by the bank as to each of the items reflected on the sample form in appendix A (including race or national origin, sex, and income). The bank shall be able to:

(1) Trace each entry on the register to the relevant application file, using an identifying number or code that can be used to retrieve the loan or application file; and

(2) Identify the bank office where the application was accepted.

(b) Notwithstanding any other provision of this part 338, the Board of Dire4ctors may require any bank to collect data regarding applications for, and originations and purchases of, home purchase loans and home improvement loans for each calendar year. These data shall be presented on a register in the format prescribed in appendix A to subpart B of this part. Data shall be collected by the bank as to each of the items reflected on the sample form in appendix A (including race or national origin, sex, and income). The bank shall be able to:

(1) Trace each entry on the register to the relevant application file, using an identifying number or code that can be used to retrieve the loan or application file; and

(2) Identify the bank office where the application was accepted.

(c) All information required by this § 338.8 must be entered on the register within 30 calendar days after the loan application is finally disposed of (that is, the application is denied or withdrawn, or the loan goes to closing).

(d) *Record retention.* Each bank shall retain a copy of the completed register required by this § 338.8 for a period of not less than twenty-five months after submission of the completed register to the Federal Deposit Insurance Corporation pursuant to Regulation C of the Federal Reserve System (12 CFR part 203).

(e) *Review of records.* Each bank shall make all information collected pursuant to this § 338.8 available to FDIC examiners for review upon request.

(Approved by the Office of Management and Budget under control number 3064–0046)

§§ 338.1 through 338.4 [Designated as subpart A]

11. Sections 338.1 through 338.4 are designated as subpart A and a new subpart heading is added to read as follows:

Subpart A—Advertising

§§ 338.5 through 338.9 [Designated as subpart B]

12. Sections 338.5 through 338.9 are designated as subpart B and a new subpart heading is added to read as follows:

Subpart B—Recordkeeping Requirements

13. Appendix A to the part is redesignated as appendix A to subpart B and revised to read as follows:

BILLING CODE 6714-01-M

Appendix A to Subpart B of Part 338—Loan Application Register

LOAN/APPLICATION REGISTER Page ____ of ____

Form FR HMDA-LAR

____________________ Name of Reporting Institution

____________________ City and State

Control number (agency use only) |_|_|_|_|_|_|_|_|_|_|.|_|

Application or Loan Information						Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant						
Application or Loan Number	Date Application Received (mm/dd/yy)	Type	Purpose	Occupancy	Amount in thousands	Type	Date (mm/dd/yy)	MSA Number	State Code	County Code	Census Tract	Race or National Origin		Sex		Income in thousands	Type of Purchaser of Loan	Reason(s) for Denial (Optional)
												A	CA	A	CA			

BILLING CODE 6714-01-C

14. A new appendix B to subpart B is added to read as follows:

Appendix B to Subpart B of Part 338—Instructions on Maintaining Loan Application Register

The format of the Loan Application Register is identical to that required by Regulation C of the Board of Governors of the Federal Reserve System. Instructions for completing the Loan Application Register are set forth at 12 CFR part 203, appendix A, section II, entitled "Completion of Register."

By order of the Board of Directors.

Dated at Washington, DC, this 24th day of September, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-23527 Filed 10-2-91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-67-AD; Amdt. 39-8045; AD 91-20-11]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes, which requires repetitive inspections of the wing main tank float switch electrical conduits for trapped water, and removal of the water, if necessary. This amendment is prompted by several incidents of wing main tank float switch electrical conduit failure. This condition, if not corrected, could result in a fuel leak from the wing main tanks, which would propagate down the wing leading edge cavity to the respective engine tail pipe and cause an external fire under the wing.

DATES: Effective November 7, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 7, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 series airplanes, which requires repetitive inspections of the wing main tank float switch electrical conduits for trapped water, and removal of the water, if necessary, was published in the **Federal Register** on April 23, 1991 (56 FR 18547).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters requested that the initial inspection compliance time be extended from the proposed 90 days to 2,000 or 3,000 flight hours. These commenters indicated that this type of inspection would usually be performed during normal scheduled maintenance, such as during a "C" check (which falls approximately every 2,000 flight hours). These commenters stated that an initial inspection conducted at 90 days should not, in itself, cause downtime problems; however, if cracked conduits are discovered during that inspection, then the fuel tank must be purged prior to replacing the conduit, and this would have an adverse impact on operations as far as costs and downtime. The FAA does not concur with the extension as requested. In developing an appropriate compliance time for this AD, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required inspection and necessary replacement during normal maintenance schedules. In consideration of the series of conduit failures reported and the safety implications involved, the FAA has determined that to defer the inspection until normal maintenance is scheduled would be neither warranted nor prudent. However, after reviewing average utilization rates and scheduled inspection intervals for affected U.S. operators, the FAA has determined that extending the repetitive inspection interval from 1,000 flight hours to 1,500 flight hours will provide an acceptable level of safety. The final rule has been revised accordingly.

Some commenters questioned the need for repetitive inspections when a new vapor seal assembly is installed in accordance with Boeing Service Letter 737-SL-28-36. These commenters pointed out that the proposed rule is applicable only to the airplanes listed in (the effectivity of) that service letter, and that the only difference between airplanes affected by the proposed rule and those that are not affected, is in the accomplishment of the vapor seal installation. Therefore, these commenters requested that the rule be revised to specify that accomplishment of the installation constitutes terminating action for the repetitive inspections. The FAA does not concur. The manufacturer's new seal identified in Boeing Service Letter 737-SL-28-26 was intended as a secondary barrier to minimize any fuel leakage in the event of a duct failure. Although the FAA has not accepted this seal as the final "fix" to the addressed problem, it does consider that those planes on which the seal is installed have less potential for being subject to the addressed unsafe condition, than those without the seal. Therefore, the final rule clarifies that if the newly installed seals develop leaks or condensation, these new seals also must be replaced and followed by subsequent repetitive inspections. It should be reiterated, however, that the FAA considers the requirements of this AD action to be interim action and intends to initiate further rulemaking to address airplanes not listed in the effectivity of Boeing Service Letter 737-SL-28-36. In addition, once a modification is developed that will positively prevent the accumulation of water (condensation) within the wing main tank float switch electrical conduit, the FAA may consider further rulemaking action applicable to all Model 737 series airplanes. Accordingly, paragraph (a) of the final rule has been revised to clarify that the requirement for the initial and repetitive inspections on the float switch electrical conduit does not preclude the requirement for the repetitive inspections on the newly installed vapor seal assemblies.

Two commenters pointed out that proposed paragraph A. requires inspection for condensation build-up and removal, if necessary, in accordance with Boeing Service Letter 737-SL-28-36, but apparently omits the additional fuel leakage inspection recommended in that service letter. The FAA does not concur. In order to accomplish the inspection required by paragraph A. of this rule, the operator

must follow the instructions of Boeing Service Letter 737–SL–28–26, which include the fuel leakage inspection prior to the inspection for condensation build-up. However, for clarification, the FAA has revised the final rule to specifically address the fuel leakage inspection.

One commenter pointed out that the applicability of the proposed rule is limited to those airplanes listed in (the effectivity of) Boeing Service Letter 737–SL–28–36; however, that listing does not include some of this commenter's latest delivered airplanes. The commenter suggested that the applicability of the proposed rule be revised to include all airplanes. Upon further review, the FAA concurs that additional, newly-delivered airplanes may be subject to the addressed unsafe condition. The FAA intends to initiate further rulemaking to address these additional airplanes.

The manufacturer stated that the preamble to the proposed rule incorrectly implied that the manufacturer was "developing a modification that would prevent the accumulation of water within the wing main tank float switch electrical conduit." The new vapor seal assembly identified in Boeing Service Letter 737–SL–28–36 was intended primarily as a secondary barrier to minimize any fuel leakage in the event of a cracked conduit. However, this vapor seal may prove also to be effective in preventing the ingress of moisture into the conduit. The manufacturer plans to evaluate the effectiveness of the new seal with the anticipation that it will be accepted by the FAA as the final design change. The FAA does not concur that anything was implied incorrectly with regard to the development of a terminating modification for this AD action. The FAA considers that such a design can be developed. If the seal described in the referenced Boeing Service Letter eventually proves to be effective in preventing the accumulation of water within the wing main tank float switch electrical conduit, the FAA may consider further rulemaking to address it as terminating action for the inspections required by this AD.

In addition, the manufacturer stated that the float switch conduit installation has been in use since 1969, and cracking of the conduit has only recently surfaced as a problem. Since the cracking that has been reported recently appears to be random in nature, it is the manufacturer's position that it is premature to establish any inspection interval until the results of the vapor seal evaluation, mentioned above, are known. The FAA does not concur. The FAA has determined that sufficient justification exists for the issuance of this AD based upon several incidents of wing tank float switch electrical conduit failure.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,900 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,250 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Parts would be available from the manufacturer at a nominal cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $206,250.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons disscused above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–20–11. Boeing: Amendment 39–8045. Docket No. 91–NM–67–AD.

Applicability: Model 737 series airplanes, listed in Boeing Service Letter 737–SL–28–36, dated November 30, 1990, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the wing main tank float switch electrical conduit and subsequent fuel leaks resulting in an engine tail pipe fire, accomplish the following:

A. Within 90 days after the effective date of this AD, and thereafter at intervals not to exceed 1,500 flight hours, perform an inspection of the wing main tank float switch electrical conduit for fuel leakage and condensation build-up, in accordance with Boeing Service LETTER 737–SL–28–36, dated November 30, 1990. If evidence of fuel leakage and/or water condensation is found while performing the initial or repetitive inspections, prior to further flight, purge and install a new vapor seal assembly in accordance with the Boeing service letter.

Note: The installation of a new vapor seal assembly does not terminate the requirement for the 1,500 flight hour repetitive inspection.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The inspections shall be done in accordance with Boeing Service Letter 737–SL–28–36, dated November 30, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124.

Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–8045, AD 91–20–11) becomes effective November 7, 1991.

Issued in Renton, Washington, on September 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-23735 Filed 10-2-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-38-AD; Amdt. 39-8033; AD 91-20-04]

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300, -400, and -500 series airplanes, which requires the installation of a newly designed auxiliary brake assembly. This amendment is prompted by reports of worn auxiliary trim brakes that may allow slippage and movement of the horizontal stabilizer under certain conditions. This condition, if not corrected, could result in degraded pitch control and/or uncommanded movement of the horizontal stabilizer under certain combinations of conditions of wear and aerodynamic loading in the event of an inoperative primary brake.

DATES: Effective November 7, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the director of the Federal Register as of November 7, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton R. Morris, Jr., Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, telephone (206) 227-2794. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-300, -400, and -500 series airplanes, which requires the installation of a newly designed auxiliary brake assembly, was published in the **Federal Register** on April 11, 1991 (56 FR 14666).

Intersted persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America provided comments on behalf of several member operators. Two members stated that the rule was not warranted because following a dual failure of a primary brake and auxiliary brake, the electric trim actuator motor and manual trim wheels would be available to arrest any aerodynamically driven stabilizer motion. The FAA does not concur that such devices should be relied upon to stop stabilizer motion in the event of the failure of the auxiliary brake. Even though these methods would be available to the flightcrew, the electric trim was not designed for this purpose. This would, in effect, circumvent the design function and regulatory requirement of the brake assemblies.

One operator stated that failure of the auxiliary brake would not affect safe flight, since the primary brake is capable of stopping stabilizer motion. The FAA does not concur. This is not true in all cases; some slippage is possible, which is the reason the airplane was designed with two independent brake assemblies.

One operator suggested that the slippage condition may not exist on all airplanes and requested that the proposed rule provide an optional provision for periodic functional testing, in accordance with tests specified in the maintenance manual, and component replacement if a unit fails a prescribed functional test. This would, in effect, preclude the proposed requirement to install the newly designed auxiliary brake assembly. The FAA does not concur. The functional test specified in the maintenance manual does not differentiate between the primary and auxiliary brake assemblies separately. The FAA considers that separate tests are necessary in order to obtain unequivocal conclusions as to the condition of each assembly. In order to accomplish a reliable functional test of the auxiliary brake assembly separately, expensive tooling would be required which would cost more than replacing the entire brake assembly with a newly designed auxiliary trim brake assembly. Further, due to interference of the components of the auxiliary brake assembly (which was discovered during the investigation of the reported events described in the Notice of Proposed Rulemaking (NPRM)), the design of the currently designed auxiliary brake will not stop stabilizer motion under all known design loads which, therefore, disqualifies a functional test of either assembly.

Three operators requested that the rule be revised to extend the compliance time from the proposed 36 months to a period ranging from 48 months to 60 months. The additional time would be necessary to acquire parts and schedule the auxiliary trim brake replacement during scheduled major maintenance. The FAA does not concur that such an extension is warranted. The FAA has been advised that adequate overhaul capability and parts availability will support a compliance time of 36 months.

One commenter stated that the manufacturer is planning to issue a revision to the service bulletin cited in the proposed rule, and requested that the later revision be incorporated into the final rule as another service information source. The FAA notes that the manufacturer, as of yet, has not issued a revision to the cited service bulletin. The FAA considers it neither prudent nor warranted to delay issuance of this final rule until such a revision to the service bulletin is developed and available.

The manufacturer suggested that the proposal be revised to refer to removal of the "stabilizer trim jackscrew actuator assembly," rather than merely the "stabilizer trim assembly." The FAA concurs that the suggested description of the affected assembly is more precise and has changed paragraph (a) of the final rule accordingly.

The manufacturer also suggested that the description of the unsafe condition be revised to specify that degraded pitch control and/or uncommanded movement of the horizontal stabilizer may occur under certain combinations of conditions of wear and aerodynamic loading "in the event of an inoperative primary brake." The FAA concurs that this description is more precise and has revised the **SUMMARY** section of the preamble to the final rule accordingly.

One commenter, representing an association of pilots, agreed with the proposed rule.

The paragraph designations of the final rule have been revised to be consistent with the standard **Federal Register** style.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has

determined that these changes neither increase the burden on any operator nor increase the scope of the AD.

There are approximately 762 Boeing Model 737-300, -400, and -500 series airplanes of the affected design in the worldwide fleet. It is estimated that 414 airplanes of U.S. registry will be affected by this AD, that it will take approximately 42 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Required parts are estimated to cost $19,118 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,871,192.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-20-04. Boeing: Amendment 39-8038. Docket No. 91-NM-38-AD.

Applicability: Boeing Model 737-300, -400, and -500 series airplanes, as listed in Boeing Service Bulletin 737-27-1161, dated November 1, 1990, certificated in any category.

Compliance: Required within 36 months after the effective date of this AD, unless previously accomplished.

To prevent uncommanded stabilizer movement in the static position, accomplish the following:

(a) Remove the existing stabilizer trim jackscrew actuator and replace it with a stabilizer trim assembly that has been modified with the redesigned auxiliary brake assembly in accordance with Boeing Service Bulletin 737-27-1161, dated November 1, 1990.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The replacement requirements shall be done in accordance with Boeing Service Bulletin 737-27-1161, dated November 1, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8038, AD 91-20-04) becomes effective November 7, 1991.

Issued in Renton, Washington, on September 9, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 91-23738 Filed 10-2-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-56-AD; Amt. 39-8040; AD 91-20-06]

Airworthiness Directives; Boeing Model 747-100 and 747-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747-100 and 747-200 series airplanes, which currently requires inspection of the engine nacelle fire extinguisher plumbing to detect improper connections made during maintenance. This condition, if not corrected, could result in failure of the fire extinguishing agent to reach the correct engine in the event of an engine fire. This action requires modification of the engine nacelle fire extinguisher plumbing to preclude improper connection and terminate the requirement for inspections and functional tests of the engine fire extinguishing system plumbing. This amendment is prompted by the development of a modification which will prevent crossed plumbing in the engine nacelle fire extinguishing system.

DATES: Effective November 7, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 7, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jon A. Regimbal, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S: telephone (206) 227-2687. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-22-03, Amendment 39-6353 (54 FR 41821, October 12, 1989), applicable to Boeing Model 747-100 and 747-200 series airplanes, to require modification of the engine nacelle fire extinguisher plumbing to preclude improper connection and terminate the requirement for inspections and functional tests of the engine fire extinguishing system plumbing, was published in the **Federal Register** on April 24, 1991 (56 FR 18782).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

One commenter requested that the compliance time be extended from the proposed 180 days to 24 months, due to a 10-month kit delivery lead time and a need to accomplish the modification during scheduled maintenance. The FAA partially concurs. The FAA has contacted the manufacturer and has been advised that the required modification kits have already been delivered; therefore, the commenter's concerns regarding a long delivery lead time are not warranted. However, in reconsideration of the practical aspect of installing the required modification during affected operators' normal maintenance schedules, the FAA has determined that the compliance time can be increased to 18 months. Such an extension will have a negligible effect on safety, since the inspections of the engine fire extinguishing system plumbing, currently required by AD 89–22–03, will remain in effect until the modification of the system is accomplished. The final rule has been revised accordingly.

The other commenter supported the AD as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 139 model 747–100, and –200 series airplanes of the affected design in the worldwide fleet. It is estimated that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Modification parts are estimated to cost $1,200 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,120.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6353 and by adding the following new airworthiness directive:

91–20–06. Boeing: Amendment 39–8040. Docket 91–NM–56–AD. Supersedes AD 89–22–03.

Applicability: Model 747–100 and –200 series airplanes, manufactured prior to January 1, 1981; equipped with General Electric CF6–45/50 or Pratt and Whitney JT9D–70 engines; as listed in Boeing Service Bulletin 747–26–2162, dated September 20, 1990, certified in any category.

Compliance: Required as indicated, unless previously accomplished. To preclude cross connection of the engine nacelle fire extinguishing plumbing during maintenance, accomplish the following:

A. Within 10 days after October 24, 1989 (the effective date of Amendment 39–6353, Ad 89–22–03), and thereafter, immediately following any maintenance action which could cause mis-plumbing, conduct an inspection of the engine fire extinguishing system plumbing in accordance with Boeing Service Bulletin 747–26A2094, Revision 1, dated March 25, 1983.

B. Before further flight, correct any discrepancy detected during the functional tests required by paragraph A. of this AD.

C. Within 18 months after the effective date of this amendment, modify the engine fire extinguisher system plumbing in accordance with Boeing Service Bulletin 747–26–2162, dated September 20, 1990. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

F. The modification shall be done in accordance with Boeing Service Bulletin 747–26–2162, dated September 20, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment supersedes Amendment 39–6353, AD 89–22–03.

This amendment (39–8040, AD 91–20–06) becomes effective November 7, 1991.

Issued in Renton, Washington, on September 9, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–23739 Filed 10–2–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91-NM-110-AD; Amdt. 39-8039; AD 91-20-05]

Airworthiness Directive; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, which requires repetitive visual inspections to detect cracks in the skin of the fuselage pressure floor panel and supporting cleats, and repair, if necessary; and eventual installation of modified cleats. This amendment is prompted by recent reports of cracks discovered in the skin of the fuselage pressure floor panel and the supporting cleats. This condition, if not corrected, could result in loss of cabin pressurization.

DATES: Effective November 7, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 7, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, which requires repetitive visual inspections to detect cracks in the skin of the fuselage pressure floor panel and supporting cleats, and repair, if necessary; and eventual installation of modified cleats, was published in the **Federal Register** on June 10, 1991 (56 FR 26624).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Line Pilots Association, the sole commenter, fully supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 21 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The estimated cost for required parts is $500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $115,850.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–20–05. British Aerospace: Amendment 39–8039. Docket No. 91–NM–110–AD.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent loss of cabin pressurization, accomplish the following:

(a) For airplanes operated to a maximum of 7.5 pounds per square inch (psi) cabin pressure differential: Prior to the accumulation of 24,000 landings, or within 3,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 3,200 landings; perform a visual inspection of the skin and cleats at the front and rear extremities of the twelve stiffeners to detect cracks, in accordance with British Aerospace Alert Service Bulletin 53–A–PM5990, Issue 1, dated January 7, 1991.

(b) For airplanes modified for operation to a maximum of 8.2 psi cabin pressure differential: Prior to the accumulation of 16,000 landings, or within 2,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 2,400 landings; perform a visual inspection of the skin and cleats at the front and rear extremities of the twelve stiffeners to detect cracks, in accordance with the British Aerospace Alert Service Bulletin 53–A–PM5990, Issue 1, dated January 7, 1991.

(c) If skin cracks are found, prior to further flight, repair in accordance with a procedure approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. If cleat cracks are found, prior to further flight, replace cracked cleats by installing a new part having post-Modification PM5629 Part (a) configuration.

(d) For all airplanes: Prior to the accumulation of 85,000 landings, install Modification PM5629 Part (a) in accordance with British Aerospace Alert Service Bulletin 53–A–PM5990, Issue 1, dated January 7, 1991.

(e) Installation of Modification PM5629 Part (a), in accordance with British Aerospace Alert Service Bulletin 53–A–PM5990, Issue 1, dated January 7, 1991, constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(h) The inspection, repair, and installation requirements shall be done in accordance with British Aerospace Alert Service Bulletin 53–A–PM5990, Issue 1, dated January 7, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–8039, AD 91–20–05) becomes effective November 7, 1991.

Issued in Renton, Washington, on September 9, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–23736 Filed 10–2–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91-NM-75-AD; Amdt. 39-8017; AD 91-18-14]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which requires the installation of stronger springs in the rear and forward passenger and service doors, and an increase in the clearance between the side baulk blade and its abutment. This amendment is prompted by a report which indicates that constant high outward force on the door during the opening sequence may prevent the side baulk blade from retracting. This condition, if not corrected, could result in the crew or passengers not being able to open the doors during an emergency situation.

DATES: Effective November 7, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 7, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which requires the installation of stronger springs in the rear and forward passenger and service doors, and an increase in the clearance between the side baulk blade and its abutment, was published in the Federal Register on May 8, 1991 (56 FR 21345).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

Since issuance of the Notice, British Aerospace has issued Revision 2 to Service Bulletin 52-89-00668 H, J, K, and L, dated June 3, 1991, which lists the correct references to the modification kits. The FAA has revised the final rule to reference this latest revision to the service bulletin as the appropriate source for service information. Furthermore, since this revised service bulletin does not change the applicability, the final rule references this revised service bulletin for applicability.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 50 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The required parts will be supplied to the operators at no cost by the manufacturer. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $203,500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-18-14. British Aerospace: Amendment 39-8017. Docket No. 91-NM-75-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes; as listed in British Aerospace Service Bulletin 52-89-00668 H, J, K & L, Revision 2, dated June 3, 1991, on which Modifications HCM00668 H, J, K & L, and HCM00931A have not been accomplished; certificated in any category.

Compliance: Required within 60 days after the effective date of this AD, unless previously accomplished.

To ensure that the forward and rear passenger and service doors open during an emergency situation, accomplish the following:

A. Install stronger springs to increase tension at the side baulk blade in the right and left rear and forward passenger and service doors (Modification HCM00668 H, J, K & L); and increase the clearance between the side baulk blade and its abutment, and shorten the plate which anchors the side baulk return springs (Modification HCM00931A); in accordance with the Accomplishment Instructions of British Aerospace Service Bulletin 52-89-00668 H, J, K, & L, Revision 2, dated June 3, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The modification requirements shall be done in accordance with British Aerospace Service Bulletin 52-89-00668 H, J, K, & L, Revision 2, dated June 3, 1991. This incorporation by reference was approved by

the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–8017, AD 91–18–14) becomes effective November 7, 1991.

Issued in Renton, Washington, on August 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–23737 Filed 10–2–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by Central Soya Co., Inc. The NADA provides for the manufacture of a Type B medicated feed containing lincomycin. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8749.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 133–508 held by Central Soya Co., Inc., P.O. Box 1400, Fort Wayne, IN 46801–1400. The NADA provides for the manufacture of Type B medicated feeds containing lincomycin.

This document removes 21 CFR 585.325(a)(11), which reflects approval of the NADA.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.325 [Amended]

2. Section 558.325 *Lincomycin* is amended by removing and reserving paragraph (a)(11).

Dated: September 27, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91–23787 Filed 10–2–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Executive Office of Immigration Review

28 CFR Part 68

[Order No. 1534–91]

Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-related Employment Practices

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends part 68 of title 28 of the Code of Federal Regulations, which contains the rules of practice and procedure for administrative hearings conducted to enforce sections 274A, 274B, and 274C of the Immigration and Nationality Act, ch. 477, 66 Stat. 163 (1952) (INA) (8 U.S.C. 1324a, 1324b, and 1324c). Sections 274A and 274B were added to the INA by the Immigration Reform and Control Act of 1986, Public Law No. 99–603, 100 Stat. 3360–80 (1986) (IRCA), and were amended by Title V of the Immigration Act of 1990, Public Law No. 101–649, 104 Stat. 5053–57 (1990) (IMMACT). Section 274C was added to the INA by IMMACT. These amendments to part 68 of 28 CFR are necessary to bring the practices and procedures established in that Part into conformity with the provisions of IMMACT.

DATES: This interim rule is effective October 3, 1991. Written comments must be submitted on or before November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041 (703) 756–6470.

SUPPLEMENTARY INFORMATION: Sections 274A, 274B, and 274C of the INA require that hearings be held before Administrative Law Judges in cases involving allegations of:

(1) The unlawful hiring, or recruiting or referring for a fee, for employment in the United States, of aliens when the hiring person or entity knows that the aliens are unauthorized to work in the United States; or of any individual when the hiring person or entity fails to comply with the employment eligibility verification requirements (8 U.S.C. 1324a(a)(1));

(2) The continued employment of aliens in the United States when the hiring person or entity knows that the aliens are or have become unauthorized for such employment (8 U.S.C. 1324a(a)(2));

(3) Unfair immigration-related employment practices (8 U.S.C. 1324b);

(4) The unlawful imposition, in the hiring, recruiting, or referring for employment of any individual, of any requirement that the individual post bond or security, pay or agree to pay any amount, or otherwise guarantee or indemnify against any potential liability under 8 U.S.C. 1324a, for unlawful hiring, recruiting or referring of such individual (8 U.S.C. 1324a(g));

(5) Knowing participation by any person or entity in activities involving fraudulent creation or use of documents for the purposes of satisfying, or complying with, a requirement of the INA (8 U.S.C. 1324c).

On November 24, 1987, the Department of Justice published an interim final rule establishing administrative practices and procedures to implement sections 274A and 274B of the INA. 52 FR 44972 (Nov. 24, 1987). After receiving comments, the Department published the final rule on November 24, 1989. 54 FR 48593 (Nov. 24, 1989). That rule governed all cases properly brought before an Administrative Law Judge that comply with the requirements of the INA. Then, on November 28, 1990, Congress enacted the Immigration Act of 1990 (IMMACT), which amended sections 274A and 274B

of the INA, and added section 274C. This amendment necessitated certain revisions to the practices and procedures established by part 68, which are set forth in this interim rule.

In addition to the revisions necessitated by IMMACT, the Executive Office for Immigration Review amended several sections which have proven particularly troublesome or added new sections to increase administrative efficiency. For example, a new section, § 68.10, was added to facilitate the dismissal of an action where the complainant has failed to state a claim upon which relief can be granted. Another section revised for administrative efficiency was § 68.33, dealing with appearances and representation, which now provides that a request for hearing filed by an attorney will be considered, in certain circumstances, to be a notice of representation by that attorney. In addition, under § 68.53, the Chief Administrative Hearing Officer's authority to review an Administrative Law Judge's decision and order in cases arising under sections 274A and 274C of the INA was made discretionary. This was also the case under the 1987 interim final rule, which was the effective rule for the first two years following enactment of the INA.

The following section by section analysis describes in detail the specific changes which this interim rule makes to individual sections of the current rule.

Section 68.1 briefly sets out the scope of the rules of practice. It has been revised to state that the Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for by these rules, the Administrative Procedure Act or by any other applicable statute, executive order or regulation. This provision was changed to highlight the importance of adhering to the Administrative Procedure Act, and to discourage undue reliance on the Federal Rules of Civil Procedure. It also gives the Administrative Law Judge more flexibility to apply the standard most appropriate to a situation not covered by the Administrative Procedure Act. This section also has been revised to make these rules applicable to document fraud cases under section 274C of the INA.

Section 68.2 paragraph (d) was revised to include the discretionary review authority of the Chief Administrative Hearing Officer for cases involving sections 274A and 274C of the INA.

Section 68.2 paragraph (f) was amended to include cases arising under section 274C of the INA.

Section 68.2 paragraph (l) was revised to add to the definition of a party, a charging party in an unfair immigration-related employment practice case, making this paragraph consistent with section 274B(e)(3) of the INA, which states that the person filing an unfair immigration-related employment practice charge with the Special Counsel will be considered a party to a complaint before an Administrative Law Judge. In particular, this definition recognizes that the person filing the charge, as a party under this definition, becomes a party to any settlement agreement pursuant to the provisions of § 68.14(a) of this part.

Section 68.2 paragraph (r) was relettered as paragraph (n) and paragraphs (n) through (q) were relettered as (o) through (r), respectively. Paragraph (q), relettered as (r), was revised to properly reflect the amendments made to the INA by the Immigration Act of 1990; namely, the definition of an unfair immigration-related employment practice case was expanded to include: (1) An entity's requesting of documents beyond those required by section 274A(b); (2) an entity's refusal to accept documents which appear genuine; and (3) intimidation, threats, coercion, or retaliation against any individual for the purpose of interfering with an individual's rights under section 274B. This last provision would include intimidation, threats, coercion, or retaliation against an individual who might not otherwise have a claim under section 274B, but rather has assisted another in that individual's section 274B claim.

New § 68.4, Complaints regarding unfair immigration-related employment practices. This new section was added to set out the appropriate time periods for the filing of complaints under section 274B of the INA.

As a result of this addition, §§ 68.4 through 68.8 were redesignated as §§ 68.5 through 68.9.

Section 68.5, Notice of date, time, and place of hearing, was amended to reflect the requirement that a hearing held pursuant to section 274C of the INA be held at the nearest practicable location.

Section 68.6(a) was amended to provide that pleadings, including complaints, must be filed with the Chief Administrative Hearing Officer prior to the assignment of the case to an Administrative Law Judge. This change makes it clear that all such filings must be with the Chief Administrative Hearing Officer in Falls Church, Virginia. Previously, the regulation stipulated that pleadings could be filed with the Office of the Chief Administrative Hearing Officer, which could be misunderstood to include the offices where Administrative Law Judges, including Administrative Law Judges "borrowed" from other agencies, are located.

Section 68.7(a) was revised to require that all pleadings be dated.

A new paragraph § 68.7(b)(5), was added requiring complainants to provide the Chief Administrative Hearing Officer with the proper parties to be served with the complaint.

Section 68.7(c) was amended to state that a complaint filed pursuant to sections 274A and 274C of the INA shall be signed by an attorney, and accompanied by a copy of the Notice of Intent to Fine and Request for Hearing.

Section 68.8(c)(2) is amended to indicate that the rule allowing five additional days for responding to pleadings or documents mailed to the parties does not apply to complaints or subpoenas. Since a complaint or subpoena is deemed served only when it is received, it is unnecessary to take into account any mailing delays.

New § 68.10 Motion to dismiss for failure to state a claim upon which relief can be granted. This new section was added to allow an Administrative Law Judge, upon respondent's motion, to dismiss a complaint for failure to state a claim upon which relief can be granted. By adding this provision to the regulations, the Administrative Law Judges will be clearly authorized to dismiss a complaint, without having to resort to the Federal Rules of Civil Procedure. A motion to dismiss filed pursuant to this section is not to be used as a delay tactic. Therefore, the filing of such a motion will not stay the time period for answering a complaint, unless the Administrative Law Judge allows otherwise.

Because of the addition of § 68.10, §§ 68.9 through 68.52 were renumbered 68.11 through 68.54, respectively.

Section 68.14(a), concerning the submission and form of consent findings and settlement agreements, has been revised to clarify that it is mandatory for the parties or their representative or counsel to submit the actual provisions of the proposed agreement to the Administrative Law Judge. The section also mandates that those individuals also submit a proposed decision and order to the Administrative Law Judge.

Section 68.15, Intervenor in unfair immigration-related employment cases, was amended by deleting the phrase establishing the grounds upon which the Administrative Law Judge would allow intervention. This revision more closely follows the broad discretionary power

of the Administrative Law Judge to grant intervention, as stated at section 274B(e)(3) of the INA.

Section 68.23 delineates the appropriate actions available if a party fails to comply with orders issued by the Administrative Law Judge during the discovery phase of the case. The term "likewise" is deleted from paragraph (a) as surplusage. Paragraph (c) was amended by removing language which appeared to grant an Administrative Law Judge the authority to impose sanctions not envisioned by the regulations. This revision clarifies that an Administrative Law Judge may impose only those sanctions listed in the regulations. Also, several grammatical revisions were made to paragraph (c).

Section 68.25, dealing with subpoenas, is revised to clarify that the Administrative Law Judge has discretionary authority to issue a subpoena at any point in a proceeding. The Administrative Law Judge may issue a subpoena upon his or her own determination or upon the request of one of the parties. The amendment eliminates the requirement that a written application be filed with the Administrative Law Judge before a subpoena be issued. In addition, this section was revised to take into account those situations where a subpoena has been requested or issued prior to the filing of a complaint. Also, this subsection was amended to clarify that mileage and witness fee payments from the government need not be paid at the time the subpoena is served. Note that service of the subpoena is effective on the date the subpoena is received.

The former § 68.25(b) was deleted as unnecessary since the Administrative Law Judge's discretionary authority to issue subpoenas provided in § 68.25(a) allows him or her to accept or reject any request for a subpoena, regardless of the time filed. This change in no way restricts the Immigration and Naturalization Service's authority to issue subpoenas pursuant to section 235 of the INA.

Section 68.28 deals with the authority granted to Administrative Law Judges necessary to carry out the hearing provisions of sections 274A, 274B, and 274C of the INA. This section of the rule is changed to emphasize the importance of the Administrative Procedure Act, and to de-emphasize the role of the Federal Rules of Civil Procedure. Accordingly, § 68.28(a)(1) is amended to read that any hearing must be conducted in accordance with the rules under the Administrative Procedure Act. In addition, the former paragraph (8) of § 68.28(a) is removed as surplusage, because § 68.1 already provides that the Federal Rules of Civil Procedure may be used as a general guideline in any situation not otherwise provided for by these rules, the Administrative Procedure Act or by any other applicable statute, executive order or regulation. Section 68.28(a)(9) is renumbered § 68.28(a)(8) and revised by removing ambiguous and vague language; this provision now clearly states that the action taken by the Administrative Law Judge must be an appropriate action in light of the circumstances.

Section 68.33 deals with appearances and representation of a party. Section 68.33(b)(5) is changed to require that a notice of appearance be signed by the attorney who filed the notice. This section was also revised to indicate that a request for hearing, filed by an attorney pursuant to sections 274A or 274C of the INA and containing the same information required by this section, shall be considered a notice of appearance. This revision was implemented to expedite and simplify the proceedings before an Administrative Law Judge and also to allow the Chief Administrative Hearing Officer to serve a complaint and notice of hearing on the respondent's attorney where the attorney has clearly stated in the request for hearing that he or she represents the respondent in this matter.

Section 68.37(b) was revised by adding language which enables an Administrative Law Judge to dismiss a complaint because of a complainant's failure to respond to orders from the bench. This provision allows an Administrative Law Judge more authority to dismiss a case where a complainant, for whatever reason, has seemingly abandoned the complaint.

Section 68.38(a) provides the time frame for the submission of motions for summary decision and is amended in its entirety to make it consistent with the time frames for pleadings, set out in revised § 68.8(a). The language requiring that a motion for summary decision be received at least twenty days prior to a hearing was further amended to allow an Administrative Law Judge to accept such a motion within the twenty days prior to a hearing, if he or she deems it appropriate. This change allows the Administrative Law Judge more discretion and flexibility. The former section did not permit an Administrative Law Judge to grant a motion for summary decision where the motion was filed within twenty days of the hearing.

Section 68.52(c) was revised and reorganized to reflect changes made by the Immigration Act of 1990. The provisions of this subsection now follow the same order as the INA, in that the available remedies that may be ordered by an Administrative Law Judge in unlawful employment cases appear first, followed by unfair immigration-related employment practice cases, and finally, document fraud cases. Additionally, all three subsections now contain a section concerning the awarding of attorney's fees.

The provision respecting unfair immigration-related employment practice cases, paragraph (c)(2)(i), was expanded to include the additional remedies enacted by the Immigration Act of 1990. Thus, the Administrative Law Judge can now order the employer to remove a false performance review from a personnel file. Also, the civil penalties for unfair immigration-related employment practice cases were revised by the IMMACT to mirror the civil penalties for unlawful employment cases, and paragraph (c)(2)(i) was amended accordingly. In paragraph (c)(2)(ii), language was added to the back pay liability provisions to include actions now deemed to be unfair immigration-related employment practices.

Section 68.52(c) was also amended by adding a new paragraph (4). This paragraph provides that an Administrative Law Judge may, in the interest of justice, correct a decision and order within 30 days in a case arising under section 274A or 274C of the INA, and within sixty days in a case arising under section 274B of the INA. While Administrative Law Judges have previously issued amended orders as necessary, this addition makes it clear that only clerical mistakes or typographical errors should be corrected in this manner. The time limits are necessary pursuant to the restrictions in sections 274A(e)(7), 274B(i)(1), and 274C(d)(4) of the INA.

Section 68.53(a) is revised to provide for discretionary review by the Chief Administrative Hearing Officer of Administrative Law Judge orders, and revises the language of § 68.53(a) in a manner consistent with sections 274(e)(7) and 274(C)(4) of the INA. This amendment is necessary to facilitate consistent decisions from the Office of the Chief Administrative hearing Officer. Under the previous rule, if an Administrative Law Judge renders a decision which is wholly inconsistent with the policy of the Office of the Chief Administrative Hearing Officer or with preceding decisions issued by the Office of the Chief Administrative Hearing Officer, the Chief Administrative Hearing Officer could not review the decision without first receiving a request

for administrative review from one of the parties. This was determined to be in contrast with the INA and the Administrative Procedure Act. The ability of the Chief Administrative Hearing Officer to resolve or correct inconsistent rulings cannot be dependent upon a request for review.

The power to modify or vacate an Administrative Law Judge's decision and order is given to the Attorney General in sections 274A(e)(7) and 274C(d)(4) of the INA. These sections limit the Attorney General's ability to delegate this authority by prohibiting the entity having review authority in section 274A cases (the Chief Administrative Hearing Officer) from having review authority over other immigration-related matters. The Chief Administrative Hearing Officer does not have authority over other immigration-related matters. Moreover, the Administrative Procedure Act clearly permits, and in fact envisions, that an agency have discretionary administrative review authority. (See 5 U.S.C. 557(b)). Without such discretionary review authority, there is no mechanism to ensure the development of a cohesive, consistent, and nationwide body of agency caselaw.

Section 68.53(a)(1) is modified to comply with the language of sections 274A(e)(7) and 274C(d)(4) of the INA, so that when the Chief Administrative Hearing Officer issues an order which modifies or vacates the order of an Administrative Law Judge, the Chief Administrative Hearing Officer's order becomes the final agency order. Conversely, where the Chief Administrative Hearing Officer does not issue an order which modifies or vacates the Administrative Law Judge's order, the Administrative Law Judge's order becomes the final agency order, thirty days after it is issued. This section is also changed to clarify when the forty-five days begins to run for judicial review of the final agency order.

Additonally, the five day time period for requesting administrative review was removed for administrative efficiency. The Chief Administrative Hearing Officer's discretionary review authority makes it unnecessary that a request for review be filed before an order can be reviewed and therefore it is not necessary to have a time limitation on receiving requests for review. However, if a party wishes to file a request for review, it can still do so, keeping in mind that the Chief Administrative Hearing Officer has thirty days to review an Administrative Law Judge's order.

Section 68.53 was also revised by adding two new paragraphs, (c) and (d), which provide for disposition of remaining substantive issues and administrative review of interlocutory orders, respectively. Paragraph (c) was inserted to make it clear that an Administrative Law Judge may dispose of any issues which remain following the issuance of a Chief Administrative Hearing Officer's order. Paragraph (d) was added to allow for the determination of a disputed question of law or policy which meets the criteria set forth in paragraph (d) prior to the issuance of a final decision and order by the Administrative Law Judge. It should be noted, however, that where a party requests a review of an interlocutory order and the Chief Administrative Hearing Officer chooses not to review the order, or a particular issue contained in the order, that party has not waived its ability to raise the issue in a later appeal. This subsection's language parallels the recommendations of the Administrative Conference of the United States, as published in 1 CFR 305.71–1.

The decision of the Executive Office for Immigration Review to implement this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). It is necessary and proper to implement this interim rule immediately because, to a significant extent, the language of this regulation merely tracks the language of the implementing statute. Moreover, because this interim rule implements section 274C of the INA, which became effective on November 29, 1990, immediate implementation of this rule is necessary to provide corresponding rules of practice and procedure for administrative hearings under 274C. Finally, these regulations do not make any substantive changes or take away rights which were established in the statute or earlier rules of practice and procedure. Therefore, these regulations are effective on the date of publication. the Executive Office for Immigration Review invites public comments within thirty days of the effective date of these rules.

Moreover, in accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order No. 12291, nor does it have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order No. 12612.

List of Subjects in 28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil Rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-discrimination.

Accordingly, title 28, part 68 of the Code of Federal Regulations is amended as follows:

PART 68—[AMENDED]

1. The authority citation for part 68 is revised to read as follows:

Authority: 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c.

2. The table of contents for part 68 is revised to read as follows:

Sec.
68.1 Scope of rules.
68.2 Definitions.
68.3 Service of complaint, notice of hearing, written orders, and decisions.
68.4 Complaints regarding unfair immigration-related employment practices.
68.5 Notice of date, time, and place of hearing.
68.6 Service and filing of documents.
68.7 Form of pleadings.
68.8 Time computations.
68.9 Responsive pleadings-answer.
68.10 Motion to dismiss for failure to state a claim upon which relief can be granted.
68.11 Motions and requests.
68.12 Prehearing statements.
68.13 Conferences.
68.14 Consent findings or dismissal.
68.15 Intervenor in unfair immigration-related employment cases.
68.16 Consolidation of hearings.
68.17 Amicus curiae.
68.18 Discovery—general provisions.
68.19 Written interrogatories to parties.
68.20 Production of documents, things, and inspection of land.
68.21 Admissions.
68.22 Depositions.
68.23 Motion to compel response to discovery; sanctions.
68.24 Use of depositions at hearings.
68.25 Subpoenas.
68.26 Designation of Administrative Law Judge.
68.27 Continuances.
68.28 Authority of Administrative Law Judge.
68.29 Unavailability of Administrative Law Judge.
68.30 Disqualification.
68.31 Separation of functions.
68.32 Expedition.
68.33 Appearances and representation.
68.34 Legal assistance.
68.35 Standards of conduct.
68.36 Ex parte communications.
68.37 Waiver of right to appear and failure to participate or to appear.
68.38 Motion for summary decision.

3. Section 68.1 is revised to read as follows:

§ 68.1 Scope of rules.

These rules of practice are applicable to adjudicatory proceedings before Administrative Law Judges of the Executive Office for Immigration Review, United States Department of Justice, with regard to unlawful employment cases under section 274A of the INA, unfair immigration-related employment practice cases under section 274B of the INA, and document fraud cases under section 274C of the INA. Such proceedings shall be conducted expeditiously and the parties shall make every effort at each stage of a proceeding to avoid delay. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter is controlling. The Rules of Civil Procedure for the District Courts of the United States may be used as a general guideline in any situation not provided for or controlled by these rules, the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.

4. In § 68.2, paragraphs (d), (f), (l), (n) through (r) are revised to read as follows:

§ 68.2 Definitions.

For purposes of these rules:

* * * * *

(d) *Chief Administrative Hearing Officer* or an official who has been designated to act as the Chief Administrative Hearing Officer, is the official who, under the Director, Executive Office for Immigration Review, generally administers the Administrative Law Judge program, and exercises administrative supervision over Administrative Law Judges and others assigned to the Office of the Chief Administrative Hearing Officer, and who, in accordance with sections 274A(e)(7) and 274C(d)(4) of the INA, exercises discretionary authority to review the decisions and orders of Administrative Law Judges adjudicated under sections 274A and 274C of the INA;

* * * * *

(f) *Complainant* means the Immigration and Naturalization Service in cases arising under section 274A and 274C of the INA. In cases arising under section 274B of the INA, "complainant" means the Special Counsel (as defined in § 68.2(p)), and also includes the person or entity who has filed a charge with the Special Counsel, or, in private actions, an individual or private organization;

* * * * *

(l) *Party* includes all persons or entities named or admitted as a complainant, respondent, or intervenor in a proceeding; or, any person filing a charge with the Special Counsel under 274B, resulting in the filing of a complaint, concerning an unfair immigration-related employment practice;

* * * * *

(n) *Prohibition of indemnity bond cases* means cases under 274A(g) of the INA in which a person or entity requires, as a prerequisite to the hiring, recruiting or referring of any individual for employment in the United States, that the individual post a bond or security, pay or agree to pay an amount or otherwise provide a financial guarantee or indemnity against any potential liability arising under 274A as a result of the hiring, recruiting, or referring of the individual;

(o) *Respondent* means a party to an adjudicatory proceeding against whom findings may be made or who may be required to provide relief or take remedial action;

(p) *Special Counsel* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 274B of the INA, or his or her designee;

(q) *Unlawful employment cases* means cases involving knowingly hiring, recruiting or referring for a fee, or continued employment of certain aliens and cases involving failure to comply with verification requirements in violation of section 274A of the INA;

(r) *Unfair immigration-related employment practice cases* means cases involving allegations under section 274B of the INA with respect to:

(1) The hiring, or recruitment or referral for a fee, of an individual for employment, or the discharging of an individual from employment, by a person or other entity:

(i) Because of such individual's national origin, or

(ii) In the case of a protected individual, as defined in section 274B(a)(3) of the INA, because of such individual's citizenship status,

(2) The use, by a person or other entity, of intimidation, threats, coercion, or retaliation against an individual for the purposes described in section 274B(a)(5) of the INA; or

(3) A person or other entity's request, for purposes of satisfying the requirements of section 274a(b) of the INA, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

§§ 68.4—68.8 [Redesignated as §§ 68.5—68.9];

§§ 68.9—68.52 [Redesignated as §§ 68.11—68.54]

5. Sections 68.9 through 68.52 are redesignated as §§ 68.11 through 68.54 and §§ 68.4 through 68.8 are redesignated as §§ 68.5 through 68.9, respectively.

6. A new § 68.4 is added to read as follows:

§ 68.4 Complaints regarding unfair immigration-related employment practices.

(a) *Generally.* An individual must file a charge with the Special Counsel within one hundred and eighty (180) days of the date of the alleged unfair immigration-related employment practice.

(b) The Special Counsel shall, within one hundred and twenty (120) days of the date of receipt of the charge:

(1) Determine whether there is a reasonable cause to believe the charge is true and whether to bring a complaint respecting the charge with the Chief Administrative Hearing Officer within the 120-day period; or,

(2) Notify the party within the 120-day period that the Special Counsel will not file a complaint with the Chief Administrative Hearing Officer within the 120-day period.

(c) The charging individual may file a complaint directly with the Chief Administrative Hearing Officer within ninety (90) days after the date of receipt of notice that the Special Counsel will not be filing a complaint within the 120-day period. However, the Special Counsel's failure to file a complaint within the 120-day period will not affect the right of the Special Counsel to investigate the charge or bring a complaint within the 90-day period.

7. Newly redesignated § 68.5(b) is revised to read as follows:

§ 68.5 Notice of date, time, and place of hearing.

* * * * *

(b) *Place of hearing.* Due regard shall be given to the convenience of the parties and the witnesses in selecting a place for a hearing. Section 274A(e)(3)(B) and 274C(d)(2)(B) of the INA require that hearings be held at the nearest practicable place to the place where the person or entity resides or to the place where the alleged violation occurred.

8. Newly redesignated § 68.6(a) is revised to read as follows:

§ 68.6 Service and filing of documents.

(a) *Generally.* An original and four copies of the complaint shall be filed with the Chief Administrative Hearing Officer. An original and two copies of all others pleadings, including any attachments, shall be filed with the Chief Administrative Hearing Officer by the parties presenting the pleadings until an Administrative Law Judge is assigned to a case. Thereafter, all pleadings shall be delivered or mailed for filing to the Administrative Law Judge assigned to the case, and shall be accompanied by a certification indicating service to all parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

* * * * *

9. Newly redesignated § 68.7 is amended by revising paragraphs (a), (b) introductory text, (b)(5), (c) and (d) and by adding paragraph (e), to read as follows:

§ 68.7 Form of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Office of the Chief Administrative Hearing Officer, the names of all parties (or after the complaint, at least the first party named as a complainant or respondent), and a designation of the type of pleading (e.g., complaint, motion to dismiss, etc.). The pleading shall be signed, dated, and shall contain the address and telephone number of the party or person representing the party. The pleading shall be on standard size (8½×11) paper and should also be typewritten when possible.

(b) A complaint filed pursuant to section 274A, 274B or 274C of the INA shall contain the following:

* * * * *

(5) Be accompanied by a statement identifying the party or parties to be served by the Office of the Chief Administrative Hearing Officer with notice of the complaint pursuant to § 68.3 of this part;

(c) Complaints filed pursuant to sections 274A and 274C of the INA shall be signed by an attorney and shall be accompanied by a copy of the Notice of Intent to Fine and Request for Hearing. Complaints filed pursuant to section 274B of the INA shall be accompanied by a copy of the charge, previously filed with the Special Counsel pursuant to section 274B(b)(1), and a copy of the Special Counsel's letter of determination regarding the charges.

(d) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided that all copies are clear and legible.

(e) All documents presented by a party in a proceeding must be in the English language or, if in a foreign language, accompanied by a certified translation.

10. In newly redesignated § 68.8 paragraphs (c) introductory text and (c)(2) are revised to read as follows:

§ 68.8 Time computations.

* * * * *

(c) Computation of time for service by mail.

* * * * *

(2) Whenever a party has the right or is required to take some action within a prescribed period after the service upon such party of a pleading, notice, or other document (other than a complaint or a subpoena) and the pleading, notice, or document is served by mail, five (5) days shall be added to the prescribed period.

11. A new § 68.10 is added to read as follows:

§ 68.10 Motion to dismiss for failure to state a claim upon which relief can be granted.

The respondent, without waiving the right to offer evidence in the event that the motion is not granted, may move for a dismissal of the complaint on the ground that the complainant has failed to state a claim upon which relief can be granted. If the Administrative Law Judge determines that the complainant has failed to state such a claim, the Administrative Law Judge may dismiss the complaint. The filing of a motion to dismiss does not affect the time period for filing an answer.

12. Newly redesignated § 68.14(a)(1) is revised to read as follows:

§ 68.14 Consent findings or dismissal.

(a) *Submission.* Where the parties or their authorized representatives or their counsel have entered into a proposed settlement agreement, they shall:

(1) Submit to the presiding Administrative Law Judge:

(i) The proposed agreement containing consent findings; and

(ii) A proposed decision and order; or

(2) * * *

* * * * *

13. Newly redesignated § 68.15 is revised to read as follows:

§ 68.15 Intervenor in unfair immigration-related employment cases.

The Special Counsel, or any other interested person or private organization, other than an officer of the Immigration and Naturalization Service, may petition to intervene as a party in unfair immigration-related employment cases. The Administrative Law Judge, in his or her discretion, may grant or deny such a petition.

14. In newly redesignated § 68.23 paragraphs (a) and (c) are revised to read as follows:

§ 68.23 Motion to compel response to discovery; sanctions.

(a) If a deponent fails to answer a question propounded, or a party upon whom a discovery request is made pursuant to §§ 68.18 through 68.22, fails to respond adequately or objects to the request or to any part thereof, or fails to permit inspection as requested, the discovering party may move the Administrative Law Judge for an order compelling a response or inspection in accordance with the request. A party who has taken a deposition or has requested admissions or has served interrogatories may move to determine the sufficiency of the answers or objections thereto. Unless the objecting party sustains his or her burden of showing that the objection is justified, the Administrative Law Judge may order that an answer be served. If the Administrative Law Judge determines that an answer does not comply with the requirements of these rules, he or she may order either that the matter is admitted or that an amended answer be served.

* * * * *

(c) If a party, an officer or an agent of a party, or a witness, fails to comply with an order, including, but not limited to, an order for the taking of a

deposition, the production of documents, the answering of interrogatories, a response to a request for admissions, or any other order of the Administrative Law Judge, the Administrative Law Judge, may, for the purposes of permitting resolution of the relevant issues and disposition of the proceeding and to avoid unnecessary delay, take the following actions:

(1) Infer and conclude that the admission, testimony, documents, or other evidence would have been adverse to the non-complying party;

(2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party;

(3) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;

(4) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both;

(6) In the case of failure to comply with a subpoena, the Administrative Law Judge may also take the action provided in § 68.25(d) of this part; and

(7) In ruling on a motion made pursuant to this section, the Administrative Law Judge may make and enter a protective order such as he or she is authorized to enter on a motion made pursuant to § 68.42 of this part.

15. Newly redesignated § 68.25 is revised to read as follows:

§ 68.25 Subpoenas.

(a) An Administrative Law Judge, upon his or her own initiative or upon request of an individual or entity before a complaint is filed or by a party once a complaint has been filed, may issue subpoenas as authorized by statute, either prior to or subsequent to the filing of a complaint. Such subpoena may require attendance and testimony of witnesses and production of things including, but not limited to, papers, books, documents, records, correspondence, or tangible things in their possession and under their control and access to such things for the purposes of examination and copying. A subpoena may be served by overnight courier service or overnight mail, certified mail, or by any person who is not less than 18 years of age. A witness, other than a witness subpoenaed on behalf of the Federal Government, may not be required to attend a deposition or hearing unless the mileage and witness fee applicable to witnesses in courts of the United States for each date of attendance is paid in advance of the date of the proceeding. Mileage and witness fees need not be paid to a witness at the time of service of the subpoena if the witness is subpoenaed by the Federal Government.

(b) The subpoena shall identify the person or things subpoenaed, the person to whom it is returnable and the place, date, and the time at which it is returnable; or the subpoena shall identify the nature of the evidence to be examined or copied, and the date and time when access is requested.

(c) Any person served with a subpoena issued by an Administrative Law Judge who intends not to comply with it shall, within ten (10) days after the date of service of the subpoena upon such person or within such other time the Administrative Law Judge deems appropriate, petition the Administrative Law Judge to revoke or modify the subpoena. A copy of the petition shall be served on all parties. If a complaint has not been filed in the matter, a copy of the petition shall be served on the individual or entity that requested the subpoena. The petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. Within eight (8) days after receipt of the petition, the individual or entity that applied for the subpoena may respond to such petition, and the Administrative Law Judge shall then make a final determination upon the petition. The Administrative Law Judge shall cause a copy of the final determination of the petition to be served upon all parties, or, if a complaint has not been filed, upon the individuals or entities requesting and responding to the subpoena.

(d) Failure to comply. Upon the failure of any person to comply with an order to testify or a subpoena issued under this section, the Administrative Law Judge may, where authorized by law, apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena.

16. In newly redesignated § 68.28, paragraph (a) is revised to read as follows:

§ 68.28 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all appropriate powers necessary to the conduct of fair and impartial hearings, including, but not limited to, the following:

(1) Conduct formal hearings in accordance with the provisions of the Administrative Procedure Act and of this part;

(2) Administer oaths and examine witnesses;

(3) Compel the production of documents and appearance of witnesses in control of the parties;

(4) Compel the appearance of witnesses by the issuance of subpoenas as authorized by law;

(5) Issue decisions and orders;

(6) Take any action authorized by the Administrative Procedure Act;

(7) Exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Attorney General as are necessary and appropriate therefore; and

(8) Take other appropriate measures necessary to enable him or her to discharge the duties of the office.

(b) * * *

17. In redesignated § 68.33 the heading of paragraph (a) is revised and paragraph (b)(5) is revised to read as follows:

§ 68.33 Appearances and Representation.

(a) *Appearances.* * * *

(b) *Representation.* * * *

(5) Except for a government attorney filing a complaint pursuant to sections 274A, 274B, or 274C of the INA, each attorney shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the case number if assigned, and the party on whose behalf the appearance is made. The notice of appearance shall be signed by the attorney, and shall be accompanied by a certification indicating that such notice was served on all parties of record. A request for a hearing signed by an attorney and filed with the Immigration and Naturalization Service pursuant to section 274A(e)(3)(A) or 274C(d)(2)(A) of the INA, and containing the same information as required by this section, shall be considered a notice of appearance on behalf of the respondent for whom the request was made.

* * * * *

18. Newly redesignated § 68.37(b) is revised to read as follows:

§ 68.37 Waiver of right to appear and failure to participate or to appear.

* * * * *

(b) *Dismissal—Abandonment by party.* A complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a complaint or a request for hearing if:

(1) A party or his or her representative fails to respond to orders issued by the Administrative Law Judge; or

(2) Neither the party nor his or her representative appears at the time and place fixed for the hearing and either

(i) Prior to the time for hearing, such party does not show good cause as to why neither he or she nor his or her representative can appear; or

(ii) With ten (10) days after the time for hearing such party does not show good cause for such failure to appear.

* * * * *

19. Newly redesignated § 68.38(a) is revised to read as follows:

§ 68.38 Motion for summary decision.

(a) A complainant, not less than thirty (30) days after receipt by respondent of the complaint, may move with or without supporting affidavits for summary decision on all or any part of the proceeding. Motions by any party for summary decision on all or any part of the proceeding will not be entertained within the twenty (20) days prior to any hearing, unless the Administrative Law Judge decides otherwise. Any other party, within ten (10) days after service of a motion for summary decision, may respond to the motion by serving supporting or opposing papers with affidavits, if appropriate, or countermove for summary decision. The Administrative Law Judge may set the matter for argument and/or call for submission of briefs.

* * * * *

In newly redesignated § 68.52, paragraph (c) is revised to read as follows:

§ 68.52 Decision and order of the Administrative Law Judge.

* * * * *

(c) *Order*—(1) *Unlawful employment of unauthorized aliens.* (i) If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has violated section 274A(a)(1)(A) or (a)(2) of the INA, the order shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of:

(A) Not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred;

(B) Not less than $2,000 and not more than $5,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred in the case of a person or entity previously subject to one order under this subparagraph; or

(C) Not less than $3,000 and not more than $10,000 for each unauthorized alien with respect to whom a violation of each such subsection occurred in the case of a person or entity previously subject to more than one order under this subparagraph.

(ii) The order may also require the respondent to comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years; and to take such other remedial action as is appropriate.

(iii) In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(iv) With respect to a violation of section 274A(a)(1)(B) of the INA, the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(v) Prohibition of indemnity bonds. If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274A(g)(1) of the INA, the order may require the person or entity to pay a civil penalty of $1,000 for each individual with respect to whom such violation occurred and require the return of any amounts received in such violation to the individual, or, if the individual cannot be located, to the general fund of the Treasury.

(vi) Attorney fees. A prevailing party may receive, pursuant to 5 U.S.C. 504, an award of attorney's fees in unlawful employment and indemnity bond cases arising under section 274A of the INA. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed. An award of attorney's fees will not be made if the Administrative Law Judge determines that the complainant's position was substantially justified or special circumstances make the award unjust.

(2) *Unfair immigration-related employment practice cases.* (i) If, upon the preponderance of the evidence, the Administrative Law Judge determines that any person or entity named in the complaint has engaged in or is engaging in an unfair immigration-related employment practice, the order shall include a requirement that the person or entity cease and desist from such practice. The order may also require the person or entity:

(A) To comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(B) To retain for a period of up to three years, and only for purposes consistent with section 274A(b)(5) of the INA, the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(C) To hire individuals directly and adversely affected, with or without back pay;

(D) To post notices to employees about their rights under this subsection and employers' obligations under section 274A;

(E) To educate all personnel involved in hiring and in complying with section 274A or 274B about the requirements of 274A or 274B;

(F) To order, in an appropriate case, the removal of a false performance review or false warning from an employee's personnel file;

(G) To order, in an appropriate case, the lifting of any restrictions on an employee's assignments, work shifts, or movements;

(H) Except as provided in paragraph (c)(2)(i)(K) of this section, to pay a civil penalty of not less than $250 and not more than $2,000 for each individual discriminated against;

(I) Except as provided in paragraph (c)(2)(i)(K) of this section, in the case of a person or entity previously subject to a single order under section 274B(g)(2) of the INA, to pay a civil penalty of not less than $2,000 and not more than

$5,000 for each individual discriminated against;

(J) Except as provided in paragraph (c)(2)(i)(K) of this section, in the case of a person or entity previously subject to more than one order under section 274B(g)(2) of the INA, to pay a civil penalty of not less than $3,000 and not more than $10,000 for each individual discriminated against; and

(K) In the case of an unfair immigration-related employment practice where an individual requests more or different documents than are required under section 274A(b) or refuses to honor documents that reasonably appear to be genuine, to pay a civil penalty of not less than $100 and not more than $1,000 for each individual discriminated against.

(ii) Back pay liability shall not accrue from a date more than two years prior to the date of the filing of the complaint. In no event shall back pay accrue from before November 6, 1986. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin, or citizenship status, unless it is determined that an unfair immigration-related employment practice exists under section 274B(a)(5).

(iii) In applying paragraph (c)(2) of this section in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with another subdivision, each such subdivision shall be considered a separate person or entity.

(iv) If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has not engaged in and is not engaging in an unfair immigration-related employment practice, then the order shall dismiss the complaint.

(v) Attorney fees. The Administrative Law Judge in his or her discretion may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed.

(3) *Document fraud cases.* (i) If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274C of the INA, the order shall include a requirement that the respondent cease and desist from such violations and to pay a civil money penalty in an amount of:

(A) not less than $250 and not more than $2,000 for each document used, accepted or created and each instance of use, acceptance or creation, as prohibited by section 274C(a) (1) through (4) of the INA; or,

(B) in the case of a respondent previously subject to one order under subsection 274C(d)(3) of the INA, not less than $2,000 and not more than $5,000 for each document used, accepted, or created and each instance of use, acceptance or creation, as prohibited by section 274C(a) (1) through (4) of the INA.

(ii) In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(iii) Attorney fees. A prevailing party may receive, pursuant to 5 U.S.C. 504, an award of attorney's fees in document fraud cases arising under section 274C of the INA. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed. An award of attorney's fees will not be made if the Administrative Law Judge determines that the complainant's position was substantially justified or special circumstances make the award unjust.

(4) *Corrections to orders.* An Administrative Law Judge may, in the interest of justice, correct any clerical mistakes or typographical errors contained in a decision and order issued in a case arising under section 274A or 274C of the INA at any time within thirty (30) days after the issuance of the decision and order. In cases arising under section 274B of the INA, an Administrative Law Judge may correct any clerical mistakes or typographical errors in a decision and order at any time within sixty (60) days after the issuance of the decision and order.

2. Newly redesignated § 68.53 is revised to read as follows:

§ 68.53 Administrative and judicial review.

(a) *Review of a decision and order of an Administrative Law Judge in cases arising under Section 274A and 274C of the INA.* In a case arising under section 274A or 274C of the INA, the Chief Administrative Hearing Officer has discretionary authority, pursuant to sections 274A(e)(7) and 274C(d)(4) of the INA and 5 U.S.C. 557(b), to review the Administrative Law Judge's decision and order.

(1) A party may file with the Chief Administrative Hearing Officer a written request for review together with supporting arguments. Within thirty (30) days of the date of the Administrative Law Judge's decision and order, the Chief Administrative Hearing Officer may issue an order which modifies or vacates the Administrative Law Judge's decision and order.

(2) If the Chief Administrative Hearing Officer issues an order which modifies or vacates the Administrative Law Judge's decision and order, the Chief Administrative Hearing Officer's decision and order becomes the final agency decision and order of the Attorney General on the date of the Chief Administrative Hearing Officer's decision and order. If the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's decision and order, then the Administrative Law Judge's decision and order becomes the final agency decision and order of the Attorney General, thirty (30) days after the date of the Administrative Law Judge's decision and order.

(3) A person or entity adversely affected by a final agency decision and order of the Attorney General respecting an assessment may file, within forty-five (45) days after the date of the Attorney General's final agency decision and order, a petition in the Court of Appeals for the appropriate circuit for review of the Attorney General's final decision and order. Failure to request review by the Chief Administrative Hearing Officer of a decision by an Administrative Law Judge shall not prevent a party from seeking judicial review.

(b) *Review of the final decision and order of an Administrative Law Judge in unlawful immigration-related employment practice cases arising under section 274B of the INA.* Any person aggrieved by an order issued under § 68.52(c)(2) may, within 60 days after entry of the order, seek review of the order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or

transacts business. If an order issued under § 68.52(c)(2) is not appealed, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge, other than an Immigration and Naturalization Service officer) may file a petition in the United States District Court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, requesting that the order be enforced.

(c) *Disposition of remaining issues following an order of the Chief Administrative Hearing Officer.* If an administrative review by the Chief Administrative Hearing Officer of an Administrative Law Judge's order does not dispose of all issues in a proceeding, the Administrative Law Judge shall, if the CAHO so directs, continue with the proceeding until the Administrative Law Judge can make a determination as to the remaining issues.

(d) *Review of an interlocutory order of an Administrative Law Judge in cases arising under Section 274A and 274C of the INA.* (1) In a case arising under section 274A or 274C of the INA, the Chief Administrative Hearing Officer may, within thirty (30) days of the date of an Administrative Law Judge's interlocutory order, issue an order which modifies or vacates the interlocutory order. If the Chief Administrative Hearing Officer does not modify or vacate the interlocutory order within thirty (30) days, the Administrative Law Judge's interlocutory order is deemed adopted. The Chief Administrative Hearing Officer may review an Administrative Law Judge's interlocutory order if:

(i) The Administrative Law Judge, within five (5) days of the date of the interlocutory order, certifies the interlocutory order for review to the Chief Administrative Hearing Officer. The Administrative Law Judge may certify an interlocutory order where the Administrative Law Judge determines that the order contains an important question of law or policy on which there is substantial ground for difference of opinion; and where an immediate appeal will advance the ultimate termination of the proceeding or where subsequent review will be an inadequate remedy; or

(ii) A party's request for certification of the interlocutory order has been denied by the Administrative Law Judge, and if the Chief Administrative Hearing Officer determines that a vital public or private interest might otherwise be seriously impaired; or

(iii) The Chief Administrative Hearing Officer, upon his or her own initiative, decides that there has not been an opportunity to develop standards which can be applied in determining whether interlocutory review of a particular issue is appropriate.

(2) Interlocutory review of an Administrative Law Judge's order, with or without certification by the Administrative Law Judge, will not stay the proceeding unless the Administrative Law Judge determines that the circumstances require a postponement.

(3) Where a party requests administrative review of an interlocutory order and the Chief Administrative Hearing Officer chooses not to review the interlocutory order, that party has not waived its ability to raise the issue(s) contained in the interlocutory order through a later appeal.

22. Newly redesignated § 68.54 is revised to read as follows:

§ 68.54 Filing of the official record.

Upon timely receipt of notification that an appeal has been taken, a certified copy of the record will be promptly filed with the appropriate United States Court.

Dated: September 23, 1991.

William P. Barr,

Acting Attorney General.

[FR Doc. 91–23514 Filed 10–2–91; 8:45 am]

BILLING CODE 1531–26–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 406, and 407

[BPD–668–CN] RIN 0938

Medicare and Medicaid Programs; Eligibility for Premium Hospital Insurance; State Buy-In Agreements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule.

SUMMARY: Federal Register document No. 91–19009, beginning on page 38074 of the issue of Monday, August 12, 1991, conformed numerous sections of the HCFA regulations with self-executing amendments made by section 9010 of the Omnibus Budget Reconciliation Act of 1987, section 301 of the Medicare Catastrophic Coverage Act of 1988, and sections 6012 and 6013 of the Omnibus Budget Reconciliation Act of 1989.

This document corrects minor technical and typographical errors in the final rule.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias (202) 245–0383.

Corrections

1. On page 38076, column 3, line 3 of item 2, "(MB–024–P)" is changed to "(MB–031–P)".

§ 406.12 [Corrected]

2. On page 38078, column 2, § 406.12, definition of "Reentitlement period" in line 12, "restricted" is changed to "reinstated".

§ 406.20 [Corrected]

3. On page 38078, column 3, § 406.20(c), at the end of the introductory text, the dash is removed and "meets the following conditions:" is inserted.

§ 407.40 [Corrected]

4. On page 38081, column 2, in § 407.40(b), the definition for "SSP" is revised to read:

SSP stands for State supplementary payments, whether mandatory or optional, to an aged, blind, or disabled individual under the second title XVI of the Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: September 26, 1991.

Michael W. Carleton,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91–23752 Filed 10–2–91; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6883

[CA–940–4214–10; CACA 27508]

Partial Revocation of the Secretarial Order Dated July 9, 1927, Subject to Section 24 of the Federal Power Act; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes the Secretarial Order dated July 9, 1927, which created Powersite Classification No. 183, insofar as it affects 15 acres of land within the Tahoe National Forest. This action will permit completion of a pending Forest Service exchange. The land will remain subject to section 24 of the Federal Power Act. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916–978–4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated July 9, 1927, which withdrew lands from the operation of the public land laws, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 19 N., R. 10 W.,
sec. 5, SE¼NW¼SW¼SW¼, E½SW¼SW¼SW¼, W½SE¼SW¼SW¼, and SW¼NE¼SW¼SW¼.

The area described contains 15 acres in Sierra County.

2. At 10 a.m. on November 4, 1991, the land shall be opened to such forms of disposition as may by law be made of National Forest System land.

3. The Federal Energy Regulatory Commission finds in DVCA–1224 that the value of the land will not be injured or destroyed for the purpose of power development by a conveyance subject to the provisions of section 24 of the Federal Power Act.

4. The land has been open to the application and offers under the mineral leasing laws, and to location and entry under the United States mining laws, subject to the provisions of the Act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

Dated: September 23, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–23800 Filed 10–2–91; 8:45 am]

BILLING CODE 4310–40–M

43 CFR Public Land Order 6885

[MT–930–4214–10; MTM 41179]

Partial Revocation of Executive Order Dated October 9, 1917; and Public Land Order No. 6831, Correction; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order corrects a date error in Public Land Order No. 6831 and revokes an Executive order insofar as it affects 17 acres of National Forest System land withdrawn for Phosphate Reserve No. 30, Montana No. 7. The land is no longer needed for that purpose. The revocation is needed to permit disposal of the land through exchange. This action will open the land to such forms of disposition as may by law be made of National Forest System land including nonmetalliferous mining, subject to other segregations of record. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The date of the Executive order referenced on page 3039, first column, in the heading and in line 1 of paragraph numbered 1 of Public Land Order No. 6831, 56 FR 3039, January 28, 1991, which reads "October 19, 1917" is hereby corrected to read "October 9, 1917."

2. The Executive Order dated October 9, 1917, which withdrew lands for Phosphate Reserve No. 30, Montana No. 7, is hereby revoked insofar as it affects the following described land:

Principal Meridian

Gallatin National Forest
T. 8 S., R. 4 E.,
sec. 27, that portion of the SE¼NW¼ and E½SW¼ lying east of the Gallatin River.

The area described contains approximately 17 acres in Gallatin County.

3. At 9 a.m. on November 4, 1991, the land described in paragraph 2 shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry for nonmetalliferous minerals under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws for nonmetalliferous minerals prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 23, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–23801 Filed 10–2–91; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AA29

Addition of the American Black Bear (Urus americanus) by the Government of Canada and the Toucan Barbet (Semnornis ramphastinus) by the Government of Colombia to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the American black bear (*Ursus americanus*) and the toucan barbet (*Semnornis ramphastinus*) have been added to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention). A list of species contained in the CITES appendices is presented for informational purposes in 50 CFR 23.23(f). Any specimen of these two species, whether alive or dead including all readily recognizable parts and derivatives with the exception of the bear's skull and/or skin with claws attached, is covered by the provisions of the Convention. Appendix III comprises species subject to regulation in particular CITES Party nations that have requested the cooperation of the other Parties in controlling trade in such species. The addition of the bear was thus initiated at the request of Canada, and the bird at the request of Colombia.

DATES: The addition to appendix III entered into effect and became enforceable for the bear on September 18, 1991, and for the bird on May 28, 1989, under the terms of the Convention. Therefore, this rule is effective on October 3, 1991. The Service will consider all comments received by December 2, 1991, regarding whether to enter a reservation on either species.

ADDRESSES: Please send correspondence concerning this notice to Chief, Office of Scientific Authority; room 725, Arlington Square Building; U.S. Fish and Wildlife Service; Washington, DC 20240. The fax number is 703–358–2202. Express and messenger-delivered mail should be addressed to

the Office of Scientific Authority; 4401 North Fairfax Drive, room 750; Arlington, Virginia 22203. Comments and other information received are available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, telephone 703–358–1708 (or FTS 921–1708).

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora regulates international trade in certain species of animals and plants. Species for which trade is controlled are included in three appendices. Appendix III includes native species that any Party nation identifies to the CITES Secretariat as being subject to regulation within its national jurisdiction for purposes of restricting or preventing exploitation, and for which it needs the cooperation of other Parties in controlling trade. Appendix II includes species that although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also includes species that must be subject to regulation in order that the trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix I includes species threatened with extinction that are or may be affected by trade.

Trade in appendix III species, including any readily recognizable part or derivative not exempted, requires the issuance of either an export permit, a re-export certificate, or a certificate of origin. An export permit is required if the shipment originates from the nation that added the species to appendix III. Export to or from other Party nations requires presentation of either "a certificate of origin" or, in the case of re-export, "a certificate from the nation of re-export" and both verify that specimen(s) originated from the non-listing Party nations and/or are being legally re-exported.

This document updates the list of CITES species reproduced in the U.S. Code of Federal Regulations (CFR) at 50 CFR 23.23(f) by adding the American black bear and toucan barbet to appendix III as determined respectively by the governments of Canada and Colombia, pursuant to Article XVI, paragraph 1 of the Convention. Any specimen of these species, whether alive or dead including all readily recognizable parts and derivatives except for the bear's skull and/or skin with claws attached, is covered by the provisions of the Convention. The CITES Secretariat notified all Party nations on June 20, 1991, for addition of the American black bear, and on February 27, 1989, for the toucan barbet. In accordance with CITES Article XVI, paragraph 2, these additions became effective 90 days after notification: September 18, 1991, for the bear; May 28, 1989, for the bird.

Any Party at any time may enter a reservation on any species added to Appendix III, thereby exempting itself from implementing the Convention for that particular species. The limited effects of a reservation in alleviating exporters and importers from documentation requirements were thoroughly discussed in a **Federal Register** notice of November 17, 1987 (52 FR 43924). In a resultant March 28, 1988, **Federal Register** notice (53 FR 9945; also see 53 FR 12497; 4/14/88), the Service made a procedural change in requesting comments about reservations. As there is no time limit for reserving on a species added to Appendix III, a proposed rule normally is not published; public comments on the issue of whether to enter a reservation are requested with publication of the final rule, and if appropriate, entering a reservation will be reconsidered.

With regard to the American black bear and the toucan barbet, the Service does not perceive any significant biological, trade, or legal issue that would warrant recommending the entering of reservation(s). It is unlikely that substantive comments for reservation(s) will be received or that any reservation would be taken. For these reasons and because a reservation if deemed appropriate can be taken at any future time, good cause exists to omit the proposed-rule notice and public-comment process, since it is unnecessary and contrary to the public interest (5 U.S.C. 553(b)).

Because the species covered in this rule were added to appendix III of the Convention effective September 18, 1991, and May 28, 1989, and because of the other reasons mentioned above, the Service finds that good cause exists for making this rule effective upon its date of publication (5 U.S.C. 553(d)).

Therefore, the Service announces the listing of the American black bear by Canada and the toucan barbet by Colombia in appendix III of CITES. The Service at this time has not recommended entering any reservation(s), and would only consider doing so if valid and compelling reasons are shown that implementation of these listings is contrary to the interests or laws of the United States. A reservation on the American black bear or the toucan barbet can be taken at any time; the Service now solicits comments on whether to enter reservation(s) on these species, for which no opportunity for comments was previously provided. The Service will consider all comments received, and if appropriate, will recommend that the United States enter reservation(s).

Note.—The Department has determined that amendments to the Convention's appendices, which result from actions of Parties to the Convention, do not require preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). The Department also has determined that these listing actions are not rules for purposes of Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Notices on appendix III species listings do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This notice was prepared by Drs. Richard M. Mitchell and Bruce MacBryde, Office of Scientific Authority, under authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Transportation, and Treaties.

Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, for the reasons set forth above, part 23, subchapter C of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 106; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

2. Amend § 23.23(f) by adding the following two entries of animal species, alphabetically under the appropriate taxonomic Class and Order, to:

§ 23.23 Species listed in appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	Date listed (month/day/year)
Class Mammalia: Mammals			
Order Carnivora:	Carnivores: Cats, Bears, etc.		
* * * * * * *			
Ursus americanus (except skull and/or skin with claws attached).	American black bear	III (Canada)	9/18/91
* * * * * * *			
Class Aves: Birds			
Order Piciformes:	Woodpeckers, Toucans, Jacamars, Barbets:		
* * * * * * *			
Semnornis ramphastinus	Toucan barbet	III (Colombia)	5/28/89

Dated: September 26, 1991.

Richard N. Smith,

Acting Director.

[FR Doc. 91-23850 Filed 10-2-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 285

[Docket No. 910102-1217]

RIN 0648-AD01

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule and request for comments.

SUMMARY: NOAA issues a final rule to require expiration every year of Atlantic bluefin tuna vessel permits and to establish an annual permit application fee of $20. The purpose of these actions is to restore the utility of the Atlantic bluefin tuna permit file by purging the inactive vessel records and to recover the administrative costs of permit application processing. The Office of Management and Budget (OMB) control number assigned to this rule's reporting and recordkeeping requirements is added to 50 CFR part 204.

DATES: The final rule is effective October 3, 1991.

Comments on the application fee requirement contained in § 285.21(k) and the requirement that permits expire every year contained in § 285.21(e), must be received on or before October 30, 1991.

ADDRESSES: Written comments on the matters specified under the **DATES** heading should be sent to Mr. Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations that govern the Atlantic bluefin tuna fishery, at 50 CFR part 285, are authorized under the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA directs the Secretary of Commerce to promulgate such regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Current regulations for this fishery limit harvests to the level specified by ICCAT by apportioning sub-quotas among domestic user groups. Various catch and gear limits apply according to each group. It is essential to enforcement officers and fishery managers that user groups are distinguishable. This is accomplished by issuing permits.

On March 11, 1991, (56 FR 10227) NMFS issued a proposed rule that addressed major concerns in the fishery and that proposed technical modifications to improve the administration of the overall management program. A 45-day comment period was provided during which public hearings were held and written comments were received. In response to public requests, this comment period was extended for an additional 15 days. The extended comment period ended May 10, 1991. Among the proposed technical improvements was a modification to § 285.21(e) that would allow the Director, Northeast Region, NMFS (Regional Director) to specify a date when a permit expires. The modification to § 285.21 is implemented by this final rule. The remaining proposals are still under consideration by NMFS.

NOAA believes that this modification is necessary to purge the Atlantic bluefin tuna permit file, which currently contains over 42,000 records. Because Atlantic bluefin tuna permits have not contained an expiration date in the past, the number of inactive records in the file is believed to be excessive. The size of this file adds to administrative costs such as computer processing and mailing costs. In addition, the file is used as a database to define the constituency affected by regulations, as well as to survey the catch and effort of the recreational angling sector of the fishery. NOAA believes it is important to clear inactive records from this file so it will not needlessly add to administrative costs and to maintain its usefulness for fishery management purposes. To do this in a timely manner, it is essential that the permit file be purged before the beginning of the 1992 fishing season beginning on January 1, 1992.

This final rule authorizes the Regional Director to issue a notice specifying a date on which all Atlantic bluefin tuna permits will expire. Such notice will be published in the **Federal Register** at least 30 days prior to the date permit holders will be required to reapply.

In addition, in response to public comment on the proposed rule, NOAA has amended § 285.21(e) to specify that all categories of bluefin tuna permits will expire every year. In further response to public comment, this final rule imposes an application fee equal to the costs of administering the permit application. Because these changes were not included in the proposed rule, NOAA expressly invites public comment on them by the date specified under **DATES**.

NOAA has accepted comments recommending these changes because it believes that the imposition of an annual permit and fee will discourage the practice of simply adding the Atlantic bluefin tuna fishery as one of several fisheries for which an individual may apply, regardless of whether or not there is intent to participate in the fishery. This will continue to distort part of the database used to manage this fishery. It is important that a mechanism for the

imposition of an annual permit and fee be in place prior to the date upon which the existing permits expire. Annual renewal of purse seine permits will not alter the eligibility requirements set forth in § 281.21(b).

Following the publication of this final rule, the Regional Director must publish a notice specifying the date upon which permits expire. This date is expected to be towards the end of the year.

The cost of processing a permit application is calculated to be $20. This was determined by totaling the costs associated with processing all Northeast Region permit applications and dividing by the estimated number of applications to be processed each year. Generally, these costs are for labor, computer use and equipment, postage and supplies. NOAA estimates that approximately one half, or 21,000, of the 42,000 current bluefin tuna permit holders will reapply for permits. At $20 each, the total cost to the industry is estimated to be $420,000. NOAA believes that the $20 fee per application is nominal and relatively insignificant when compared to the individual costs of commercial tuna fishing operations. It should be noted that permits are not required of recreational anglers who traditionally fish for the small tunas. Therefore, the imposition of the fee largely affects those fishermen who intend to sell the giant tuna they catch. This is based on the assumption that fishermen pursuing giant tuna, which weigh 310 lbs. (141 kg) or more, do not intend to use them for home consumption as the size and commercial value discourage this purpose.

Comments and Responses

Ten comments were received on the modification authorizing the Regional Director to specify a date upon which Atlantic bluefin tuna permits will expire, and are discussed below.

Comment: Two commenters suggested that a nominal fee (approximately $10) should be charged. One said the fees could be used for education, enforcement, and establishment of a toll-free number.

Response: NOAA believes that an application fee equal to application processing costs is both nominal and appropriate. NOAA does not have the authority to dedicate these funds for its own use; they accrue to the General Treasury.

Comment: One commenter believed NMFS is seeking to finance enforcement efforts by charging fees.

Response: As stated in the previous response, NOAA cannot spend these fees.

Comment: One commenter believed permits should be required for those who sell their fish.

Response: NOAA issues permits by gear category, rather than by a "commercial" or "recreational" designation, to facilitate quota monitoring. NOAA may consider issuing permits to sell Atlantic bluefin tuna in the future if the management system is revised accordingly.

Comment: One commenter believes tuna fishing should be regulated like deer hunting.

Response: NOAA interprets this comment to mean permit application fees should be used to enhance conservation and management programs for the Atlantic bluefin tuna resource. As stated previously, NOAA cannot spend these fees.

Comment: Three commenters believe that tuna permits should be renewed annually and two comments were received supporting permit renewal on a regular basis, but neither was specific about the period of time for which a permit should be valid. One of the latter comments was submitted by a New York fishing club and represented the opinion of the membership.

Response: NOAA concurs with these commenters and, for the reasons discussed in the preamble, intends to issue permits on an annual basis.

Classification

The permit expiration measure and application fee requirement are minor administrative actions that neither alter the scope of the previous Environmental Impact Statement, nor pose more than limited potential for effect on the human environment, and therefore, are categorically excluded from further action under the National Environmental Policy Act.

The Assistant Administrator for Fisheries, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. The total cost to the industry is expected to be $420,000 but only $20 per entity. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The permit application fee of $20 per year will not add substantially to the costs of commercial fishing operations and does not apply to the recreational sector fishing for small tunas. Therefore, no adverse or beneficial impacts are anticipated and, therefore, a regulatory flexibility analysis was not prepared.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The requirements have been approved by the Office of Management and Budget under Control Number 0648–0202. The public reporting burden for this collection is estimated to be 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator finds, pursuant to the Administrative Procedure Act (APA) (5 U.S.C. 553 (d)(3)), for good cause that it is not necessary to delay for 30 days the effective date of this final rule. The action authorized by this rulemaking does not affect the public until a 30-day advance notice of permit expiration is published in the **Federal Register**. An additional 30-day delay of effectiveness under the APA that would delay reissuing permits for 60 days is unnecessary and would make it administratively impossible to purge the permit file for the 1992 fishing year. Nevertheless, NOAA invites comments on its intent to require annual renewal of permits and on its permit fee (see **DATES**).

To avoid renewal applications filed immediately to avoid the permit fee, NOAA also finds that it would be contrary to the public interest to delay for 30 days the effectiveness of the permit fee requirement.

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 285

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 27, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 204 and 285 are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by adding in the left hand column, in numerical order, "§ 285.21(e)" and adding in the right hand column, in a corresponding position, "–0202".

PART 285—ATLANTIC TUNA FISHERIES

3. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

4. In § 285.21, paragraphs (e) and (k) are revised to read as follows:

§ 285.21 Vessel permits.

* * * * *

(3) *Duration.* A permit issued under this section remains valid until it is suspended or revoked, or expires. A permit issued under this section expires when the owner or name of the vessel changes, or every year on the date specified by the Regional Director by notice published in the **Federal Register** at least 30 days in advance of the expiration date.

* * * * *

(k) *Fees.* The fee for any permit application processed under this section is $20.00. A certified check or money order in this amount payable to the "Department of Commerce" must accompany any application submitted under paragraph (c) of this section. Applications not accompanied by the permit fee will be considered deficient.

* * * * *

[FR Doc. 91–23769 Filed 9–30–91; 9:53 am]

BILLING CODE 3510–22–M

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50 CFR Part 651

[Docket No. 901246–1216]

RIN 0648–AC88

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule adopted as final without change.

SUMMARY: The final rule to implement Amendment 4 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP), published May 31, 1991 (56 FR 24724), contained an interim final rule requiring that nets with small mesh stowed below deck be secured in a manner consistent with what is required for nonconforming net and mesh stowed on deck—specifically, that they be fan-folded (flaked) and bound around their circumferences. The interim final rule is adopted as a final rule without change.

EFFECTIVE DATE: October 3, 1991.

FOR FURTHER INFORMATION CONTACT: Martin Jaffe (NMFS, Resource Management Specialist), 508–281–9272.

SUPPLEMENTARY INFORMATION: A notice of availability of Amendment 4 to the FMP was published on December 7, 1990 (55 FR 50572), and the proposed rule was published on January 10, 1991 (56 FR 979). A specific requirement that net with small mesh stowed below deck be secured in a manner consistent with what is required for nonconforming nets and mesh stowed on deck—specifically, that they be fan-folded (flaked) and bound around their circumference was inadvertently omitted from the proposed rule. This change had been discussed by the New England Fishery Management Council but was not included in Amendment 4. The U.S. Coast Guard submitted a written comment bringing the omission to the attention of NMFS. Subsequently, in the final rule to implement Amendment 4, the below-deck net stowage requirement was established by an interim final rule so that public comment could be solicited. No comments were received by the established deadline of June 12, 1991; therefore, the interim final rule is adopted as final without change. This rule is codified at 50 CFR 651.20(f)(1)(iii).

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Under authority of 16 U.S.C. 1801 *et seq.* the interim regulation amending 50 CFR 651.20(f)(1)(iii), published May 31, 1991 (56 FR 24724), is adopted as final without change.

Dated: September 27, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–23768 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 663

[Docket No. 910939–1239]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) issues an emergency interim rule to allow vessels using nontrawl fishing gear to land 300 pounds or less of sablefish even though the allocation for that gear type has been reached. The regulations are intended to avoid waste of sablefish caught by nontrawl gear targeting on other species and to avoid severe economic hardship for small hook-and-line fishing operations that could otherwise face an effective closure until the new allocation becomes available on January 1, 1992. This action deviates from the management measures announced prior to the start of the 1991 fishing season and is necessary because large harvests resulted from the unanticipated shift of fishing effort into the Pacific coast sablefish fishery from the Gulf of Alaska fishery.

EFFECTIVE DATES: This emergency rule is effective from 0001 hours Pacific Local Time, September 30, 1991 until 2400 hours Pacific Standard Time January 2, 1991 and may be extended through December 31, 1991. Comments will be accepted until October 15, 1991.

ADDRESSES: Comments on this emergency rule may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731–7415.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION:

Background

The harvest guidelines and allocations for sablefish during 1991 were specified at the start of the calendar year (56 FR 645, January 8, 1991). The Pacific Fishery Management Council (Council) recommended and the Secretary concurred that the overall amount of sablefish to be harvested in 1991 (8,900 metric tons (mt)) should be expressed as a harvest guideline rather than a quota. The allocations of sablefish among gear types were expressed as quotas. While

a harvest guideline is a target for managers who may adjust trip limits or other measures to meet that target, a fishery is not necessarily closed if the harvest guideline is reached. If a quota is reached, further landings of the species covered by the quota must be prohibited.

In establishing the groundfish management measures for 1991, the Council recognized that the measures for the sablefish fishery needed to be altered because the allocation to nontrawl vessels was increasingly being harvested by the large, mobile longline vessels. This shift in the harvest sector could result in the nontrawl quota for sablefish (3,612 mt) being taken early in the year, leaving the small hook-and-line vessels with no opportunity to fish for sablefish. The Council also expressed concern that a complete prohibition on landing sablefish for a great portion of the year would increase uncounted discards in nontrawl fisheries for other species.

In an attempt to resolve this problem equitably, the Council delayed the full opening of the sablefish fishery until April 1, 1991, allowed landings of less than 1,500 pounds from nontrawl vessels between January 1 and March 31, and planned to impose a landing limit of 500 pounds per trip when 300 mt remained in the nontrawl quota. The April 1 opening was expected to coincide with the opening of the sablefish fishery in the Gulf of Alaska, thereby spreading the fishing effort from the mobile longline fleet between the two areas.

The sablefish season off Alaska was set after the Pacific coast season and opened on May 15, 1991. Large longline vessels were able to fish in the Pacific coast fishery before moving to the fishery off Alaska. This caused the Pacific coast sablefish quota to be taken much faster than had been anticipated. In fact, the data reporting system was not able to track the catches of the vessels that were capable of remaining at sea for extended fishing trips, and the 300 mt of sablefish that was to be reserved for use under the small trip limit through the end of the year was nearly taken by May 21. By July 1, the entire nontrawl sablefish quota had been taken and all landings were prohibited as of July 1, 1991 (56 FR 30338; July 2, 1991). With almost 4 months left before the next year's quota is made available, small local fleets cannot land sablefish and, if they fish for other species, they must discard any sablefish bycatch.

During its July 9–12, 1991, meeting, the Council heard from several sablefish fishermen who were affected by the early closure of the nontrawl quota. The fishermen stressed the economic hardship caused by the short season and their concern that in the remaining months of this quota year incidentally caught sablefish would be wasted. They sought some relief in the form of a minimal landing allowance. The Council's Groundfish Management Team reported that a small trip limit, such as 300 pounds (0.14 mt) per trip, would allow less than 40 mt per month coastwide and would have no measurable biological impact, but would allow small vessel operators to continue landing sablefish as part of a mix of species. The trawl fishery was projected to catch nearly its allocated quota of sablefish, which was 4,988 mt, and treaty Indian fishermen are expected to take the 300 mt that was reserved for them from the total harvest guideline.

Based on the information presented at its July meeting, the Council recommended that the Secretary of Commerce take emergency action under the authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) to allow landings of no more than 300 pounds of sablefish per fishing trip for nontrawl vessels. This emergency rule is effective for an initial period ending 90 days after the date of publication and it is anticipated that the effectiveness will be extended until December 31, 1991, after the initial period elapses.

Emergency Actions

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that the allowance of minimal landings of sablefish by nontrawl fishing vessels is necessary to respond to an emergency situation, namely, the unanticipated attainment of the nontrawl sablefish quota by July 1 of this year, and is consistent with the Magnuson Act and other applicable law. The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for comment, as generally required by section 553(b) of the Administrative Procedure Act; because this emergency rule relieves a restriction on the nontrawl fishery, the effective date need not be delayed for 30 days under section 553(d)(1). The public had opportunities to comment on the substance of this emergency rule during the meeting of the Council and its advisory committees in July 1991. The public will also have an opportunity to comment on the emergency measures during the comment period provided by this rule.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that order.

An environmental assessment (EA) has been prepared for this action and the Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Directors (see **ADDRESSES**).

This emergency rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612. Washington, Oregon, and California are expected to implement state regulations compatible with the Federal rule.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Fish, Administrative practices and procedures, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 27, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 663 is revised as follows.

PART 663—[AMENDED]

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.23, add a new paragraph (b)(4) from September 30, 1991 until January 2, 1992 to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(4) *Nontrawl sablefish.* Notwithstanding the closure of the fishery on July 1, 1991, persons may use nontrawl gear to take and retain, possess, or land no more than 300 pounds per day of sablefish from September 30, 1991 until January 2, 1992.

[FR Doc. 91-23793 Filed 9-30-91; 12:14 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 192
Thursday, October 3, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ASO-21]

Proposed Establishment of Transition Area, Prestonburg, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Prestonburg, KY Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve the Big Sandy Regional Airport. In order to provide additional airspace for protection of instrument flight rules (IFR) aircraft executing the SIAP, it is necessary to lower the floor of controlled airspace from 1200 to 700 feet above the surface in vicinity of the airport. If approved, the operating status of the Big Sandy Regional Airport will change from visual flight rules (VFR) to IFR concurrent with publication of the SIAP.

DATES: Comments must be received on or before November 20, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No.91-ASO-21, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASO-21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Prestonburg, KY Transition Area. This proposed action would lower the floor of controlled airspace from 1200 to 700 feet above the surface in vicinity of the Big Sandy Regional Airport. A standard instrument approach procedure has been developed to serve the airport. This proposed action would provide additional controlled airspace for protection of IFR aeronautical operations. If approved, the operating status of the Big Sandy Regional Airport will be changed from VFR to IFR concurrent with publication of the instrument approach procedure. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Prestonburg, KY (New)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Big Sandy Regional Airport (lat. 37°45'04"N., long. 82°38'13"W.).

Issued in East Point, Georgia, on September 20, 1991.

Don Cass,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 91-23779 Filed 10-2-91; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Proposed Regulation Prohibiting Certain Transactions Between Commodity Pool Operators and Affiliated Persons

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing new paragraph (d) of § 4.20, which would prohibit a commodity pool operator from using funds or property of a commodity pool it operates to purchase assets of, purchase securities issued by, or to lend money or other property to such commodity pool operator or affiliated persons of such commodity pool operator as that term would be defined in new paragraph (d). Certain limited exemptions would be provided including an exemption to allow a commodity pool operator to invest funds of a pool it operates in certain affiliated money market funds. Considering the risks to public investors created by such transactions, as more fully explained herein, the Commission requests comment on several issues, including whether the proposed rule is warranted or whether the preclusion against self-dealing under basic fiduciary law, coupled with disclosure of transactions between commodity pool operators and affiliated persons thereof is sufficient.

DATES: Comments on proposed § 4.20(d) must be received on or before December 2, 1991.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: France M.T. Maca, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice Rule

While the Commission has determined that the proposed new paragraph of Rule 4.20 will not affect the existing paperwork burden previously approved by the Office of Management and Budget, the public reporting burden for the collection of information which includes Commission Rule 4.20 and all other rules pertaining to the operations and activities of commodity pool operators and commodity trading advisors and to monthly reporting by futures commission merchants (3038-0005) is estimated to average 30.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038-0005), Washington, DC 20503.

II. Introduction

Commodity pool operators ("CPOs") [1] are required to register with the Commission unless they qualify for an exclusion from the definition of the term CPO or an exemption from registration as a CPO.[2] Part 4 of the Commission's regulations [3] relates to the operations and activities of CPOs and commodity trading advisors. In particular, the current part 4 regulations impose certain disclosure, reporting and recordkeeping requirements for CPOs registered or required to register (§§ 4.21, 4.22 and 4.23 respectively); require a CPO to operate its pool as a legal entity separate from that of the pool operator; require pool funds to be received in the pool's name; and prohibit CPOs from commingling pool property with the property of any other person. (Sections 4.20(a), 4.20(b) and 4.20(c), respectively.) As more fully explained below, proposed Rule 4.20(d) may further the purposes of part 4 of the Commission's regulations by prohibiting a CPO from using pool funds to purchase assets of and securities issued by, or to lend money or other property to, such CPO and affiliated persons of such CPO.

III. Background

Section 205 of the Commodity Futures Trading Commission Act of 1974 (Pub. L. 93-463, 88 Stat. 1389, 1397) amended the Commodity Exchange Act (the "Act") to require the registration of CPOs with the Commission. On August 5, 1975, the Commission established an advisory committee (the "Advisory Committee") to consider and submit reports and recommendations to the Commission on the standards for regulation under the Act of CPOs and other commodity professionals. In its report to the Commission, the Advisory Committee stated that "since commodity pools are simply liquid pools of capital, the dishonest pool operator has many opportunities for conversion, misappropriation or larceny of the pool's funds and other assets." [4] The Advisory Committee generally expressed the view that regulation of CPOs should be accomplished "by way of disclosure rather than through prohibition or restriction." [5] However, the Committee recommended that CPOs be prohibited from engaging in transactions with the pools they operate and from commingling pool assets with their own assets,[6] and be permitted to engage in

[1] Section 2(a)(1)(A) of the Commodity Exchange Act defines a commodity pool operator as: "* * * any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order." Section 2(a)(1)(A) of the Commodity Exchange Act, 7 U.S.C. 2 (1988).

[2] Commission Rule 4.5 (17 CFR 4.5 (1990)) excludes certain otherwise regulated persons operating qualifying investment vehicles from the definition of the term "commodity pool operator" upon the filing of a notice of eligibility. Commission Rule 4.13 (17 CFR 4.13 (1990)) exempts from registration as a CPO certain persons who, among other things, do not receive compensation for operating a pool and certain persons who, among other things, operate pools the total gross capital contributions of which do not in the aggregate exceed $200,000.

[3] 17 CFR 4.1-4.41 (1990).

[4] Report of the Advisory Committee on Commodity Futures Trading Professionals, August 5, 1976 (CCH Comm. Fut. L. Rep., Special Edition No. 29, part II, August 20, 1976). Commodity Pool Operators, Recommendations and Discussion, part 1.

[5] Id. Summary of Major Recommendations and Conclusion, Page 3.

[6] In this context, the Committee discussed the potential for conversion, misappropriation and

Continued

non-arms-length transactions with their pools only based upon the "informed, prior consent of a majority of the pool[s] participants." [7] It also recommended that the Commission adopt disclosure, reporting and recordkeeping requirements for CPOs. The Advisory Committee remarked that the treatment of pool funds by a CPO is especially critical due to "the complexities of futures trading and the unsophisticated nature of many pool participants," and concluded that "it is * * * vital that the Commission adopt and enforce rules requiring pool operators to deal properly with the funds and other assets belonging to the pool." [8]

On January 8, 1979, the Commission published part 4 of its regulations under the Commodity Exchange Act.[9] Part 4 incorporated many of the requirements recommended by the Advisory Committee and reflected, with limited exceptions, the Advisory Committee's general preference for reliance upon disclosure requirements rather than restrictions upon conduct. With respect to the disposition of funds and property of a commodity pool, part 4 included, among other provisions, a prohibition against commingling of the property of any pool operated by the CPO with the property of any other person (currently § 4.20(c)) except under specified conditions;[10] a requirement that the CPO disclose how pool funds not deposited as margin will be held (§ 4.21(a)(9)(ii)); a requirement that the CPO disclose all actual or potential conflicts of interest (§ 4.21(a)(3));[11] a requirement that any material business dealings between the pool, the pool's operator, commodity trading advisor, futures commission merchant, or the principals thereof be disclosed in the pool's monthly or quarterly Account Statement (§ 4.22(a)(3)); and various recordkeeping requirements (§ 4.23).[12] [13]

Part 4 as originally enacted did not include any restriction on the use of pool funds not deposited as margin for futures transactions or any specific preclusion of non-arms-length transactions between a pool and its CPO or entities affiliated with its CPO.[14] However, the Commission stated that the newly adopted prohibition against the commingling of pool property with property of any other person was "intended to prevent CPOs from converting property of the pool or otherwise using that property for their personal benefit" an "essentially require[d] CPOs to segregate pool property." [15] In addition, as the Commission had previously stated, the "full disclosure of the material facts of the pool's organization and operations * * * may expose and thus help to circumscribe the undesirable business practices of some pool operators." [16]

In 1980, the Commission proposed Rule 4.20 to respond to "an increase in abusive activity in commodity interest account management.[17] As adopted, new Rule 4.20 required that a pool be operated as a legal entity separate from that of the CPO; mandated that all funds received by a CPO for the purchase of an interest in a pool that it operates be received in the pool's name; and removed all exceptions to the prohibition against commingling of pool assets.[18] As discussed below, to further effectuate the Commission's intention that pool property not be used for the benefit of the CPO or parties other than the pool participants, the Commission is proposing that existing disclosure requirements be supplemented by a preclusion against specified uses of pool funds in transactions involving the CPO and business affiliates of the CPO. Futhermore, the Commission believes that a public dialogue on some of the issues raised by this release and in particular the costs and benefits of design restrictions in the nature of those proposed is in the public interest, particularly in view of the increasing number of CPOs operating in a network of related entities and in view of the increase in new types of products that pools potentially could seek to purchase from affiliates of their CPO. This dialogue will assist the Commission in determining how best to provide continued protection to the public customer and ensure that funds committed for participation in the futures markets and related investments are not subject to undue risk of diversion.

IV. Discussion

Current Commission regulations do not prescribe how pool assets must be invested or, apart from prohibiting commingling, directly limit the transactions a CPO may enter into on behalf of the pools it operates. CPOs generally are restricted in their use of pool funds by the terms of pools' organizational documents (*e.g.*, limited partnership agreement or articles of incorporation). In addition, the statutory proscription in Section 4*o* of the Act against employment of "any device, scheme, or artifice to defraud" or engaging "in any transaction, practice, or course of business which operates as a fraud or deceit" upon any pool participant or prospective pool participant,[19] the requirements of § 4.21(a)(3) concerning disclosure of actual or potential conflicts of interest on the part of, among others, the CPO and of § 4.21(a)(9)(ii) concerning disclosure of the use of funds not deposited as margin,[20] and the CPO's duty, reflected in § 4.21(h), to disclose all material information to prospective and existing pool participants impose limitations upon the CPO's ability to engage in transactions involving pool

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mishandling of pool funds. It noted that pool funds not deposited with FCMs "are relatively unprotected" and recommended that regulations be adopted to "provide pool participants with basically the same protections that [Commission] rules provide to FCM customers." Id., Summary of Major Recommendations and Conclusions, part 6b.

[7] Id., Commodity Pool Operators, Part B.3.

[8] Id., Commodity Pool Operators, part B. The Advisory Committee also recommended that minimum financial requirements be established for pool operators because an undercapitalized pool operator might be unable to absorb the substantial costs entailed in operating a commodity pool and be "tempted to convert assets of the pool." The establishment of a minimum financial requirement for the pool operator was recommended to help prevent such misconduct. In the release accompanying the Commission's proposed part 4 regulations (42 FR 9266 (February 15, 1977)) ("Proposing Release"), the Commission requested comments on whether a minimum net worth requirement for pool operators should be adopted as recommended by the Advisory Committee. After considering this measure and the comments thereon, which were generally opposed to it, the Commission decided not to adopt it. In adopting rules prohibiting commingling of pool property with the property of the CPO or of any other person and requiring that pool funds be received in the name of the pool (see discussion *infra*), the Commission addressed the concerns underlying the Advisory Committee's recommendation for minimum financial requirements.

[9] 44 FR 1918 (January 8, 1979) ("Adopting Release")

[10] This prohibition was originally contained in Rule 4.24. As discussed *infra*, in 1981, the prohibition was made absolute and integrated into new Rule 4.20. Original § 4.24 (currently § 4.20) was adopted "to prevent CPOs from converting property of the pool or otherwise using that property for their personal benefit." (*Id.* at 1923).

[11] Section 4.21 was adopted "to protect pool participants—particularly those who are unsophisticated in financial matters—by ensuring that they are informed about the material facts regarding the pool before they commit their funds." (*Id.* at 1920).

[12] Section 4.23 was adopted "to enable pool participants and the Commission to ascertain whether the CPO is dealing properly with pool funds" and "to serve as a basis for the timely and accurate reporting of the pool's operations to participants". (*Id.* at 1922).

[13] All Commission rules are cited with the section numbers now in effect.

[14] Neither the Proposing Release nor the Adopting Release explains why no such provisions were adopted.

[15] Adopting Release, at 1923.

[16] Proposing Release, at 9266.

[17] 45 FR 51600 (August 4, 1980)

[18] 46 FR 26004 (May 8, 1981)

[19] 7 U.S.C. 6*o* (1988).

funds.[21] Pursuant to § 4.21(a)(9) the pool's Disclosure Document must disclose the manner in which the pool will fulfill its margin requirements, the form in which pool funds not deposited as margin will be held, and if funds will be held in assets other than cash, the nature of such non-cash assets and to whom any income generated by such non-cash assets will be paid.

The absence of specific restrictions upon pool investments contrasts with the strict requirements applicable to the disposition of customer funds by futures commission merchants ("FCMs").[22] Section 4d(2) of the Act provides than an FCM must maintain customer funds segregated from its own funds and may not use customer funds to margin the trades, or to secure or extend the credit of, any customer other than the one for whom the funds are held. Both the Act and Commission regulations specify that customer funds may be invested only in obligations of the United States, in general obligations of any state or of any political subdivision thereof, or in obligations fully guaranteed as to principal and interest by the United States.[23] Pool funds are not required to be deposited with an FCM.[24] However, when so deposited, pool funds are, of course, subject to the rules and regulations applicable to other customer funds held by FCMs.

The Commission continues to believe that its regulatory objectives for CPOs generally are better achieved by disclosure requirements than direct restrictions upon otherwise lawful activities. However, several factors warrant consideration of express restrictions upon the use of pool funds in transactions in which the CPO or a related entity is an interested party. These factors include: the increasing diversity of commodity pool investment objectives; the increasing number of CPOs operating multiple pools and of CPOs operating as part of a group of affiliated entities; the limited percentage of pool assets committed to margin; the fact that transactions engaged into on behalf of a pool by its CPO with an entity in which the CPO has an interest may impair the CPO's judgment as the professional manager of the pool; and the possible deterrent effect of a specific prohibition against certain forms of improper conduct as compared to reliance exclusively upon disclosure or more general fiduciary, anti-fraud, or anti-commingling standards.

The fiduciary duties of CPOs to participants in the pool should be construed, even in the absence of an express prohibition, to preclude most transactions with pool funds in which the CPO is an interested party, including transactions in which an affiliate of the CPO is the counterparty to the pool. A CPO is defined in the Act as being engaged in "a business which is of the nature of an investment trust." [25] The term "trust" has been defined as "that relation between two persons by virtue of which one of them holds property for the benefit of the other." [26] The relation of a CPO to participants in a pool thus is comparable to that of a trustee to the beneficiaries of a trust. Among a trustee's duties is the duty to administer the trust solely in the interest of the beneficiaries, *i.e.*, not to profit at the expense of the beneficiaries, not to sell trust property to himself, even when the trustee acts in good faith and pays a fair consideration, and not to effect a sale in which he has a personal interest.[27] The common law preclusion against self-dealing by a trustee has been applied to prohibit transactions in which a trustee invested trust funds in securities of an affiliate of the trustee.[28] In addition to these common law principles, the existing prohibition against commingling of pool property with that of the CPO may be read to preclude some uses of pools funds in transactions with affiliates of the CPO.

Notwithstanding these existing prohibitions, the Commission wishes to consider whether a specific prohibition targeted at certain forms of affiliate transactions involving pool funds is now warranted. The recent substantial growth in the volume of assets under the management of CPOs, together with the common practice of maintaining only a small percentage of pool assets at FCMs, increases the potential for the use of pool funds in transactions in which parties affiliated with the CPO may have an interest. A recent survey of CPOs conducted by the Commission's Division of Economic Analysis found that only about 8% of the net assets under the management of large CPOs on September 30, 1988, was held in an account at an FCM to margin or secure futures or commodity option contracts.[29] Thus, the vast majority of pool assets under the management of the large CPOs surveyed were in investments not subject to Commission jurisdiction.

The potential for CPOs to invest pool funds in transactions in which the CPO or an affiliate may be interested parties and which may be contrary to the interests of the passive participants is heightened during a period when certain affiliated companies are experiencing financial difficulties. This potential is illustrated in the allegations of a recent federal court complaint filed by the Commission in which a CPO was charged with commission of a fraud or deceit upon pool participants in

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[20] Rule 4.21(a)(9)(ii) requires a CPO to disclose the form in which pool funds not deposited as margin will be held after the commencement of trading by the pool. If such funds will be held in assets other than cash, the CPO must disclose (A) the nature of such non-cash assets; and (B) if such assets generate income, the person to whom that income will be paid. Section 4.21(a)(9)(iii) provides that if pool funds not deposited as margin or paid as premiums will be held outside of the United States, its territories or possessions, the pool operator must specify where such funds will be held. Pursuant to Rule 4.21(a)(9)(ii) and (iii), Rule 4.21(a)(3), and Rule 4.21(h), Commission staff have advised CPOs to provide disclosures concerning the types of investments in which pool funds not deposited as margin will be held, *e.g.*, equities, bonds, commercial paper, repurchase agreements, the situs at which such investments will be held, *e.g.*, U.S. or foreign money center bank, U.S. broker-dealer, foreign broker, and whether such investment transactions involve entities affiliated with the CPO. *See* White, The "Lore" that the CFTC Staff has Added to the Law, Comm. L. Letter, January 1991, at 1,3.

[21] Furthermore, persons registered or required to register under the Act are subject to criminal penalties pursuant to Section 9(a) of the Act, 7 U.S.C. 13(a), if they convert, with criminal intent, any money or securities received from pool participants.

[22] Section 4d(2) of the Act, 7 U.S.C. 6d(2) (1988) and §§ 1.20–1.29 of the Commission's regulations, 17 CFR 1.20–1.29 (1990).

[23] Section 4d(2) of the Act; Section 1.25 of the regulations, 17 CFR 1.25.

[24] Indeed, as more fully discussed *infra*, the Commission has found that in practice generally only a small portion of pool funds is deposited with FCMs.

[25] See Note 1, *supra*.

[26] 89 CJS Trusts § 2 (1955).

[27] Restatement (Second) of Trust section 170. See, *e.g.*, In Re Ryan's Will, 291 N.Y. 376, 52 N.E.2d 909 (1942), where the court held that the trustee, a trust company that invested trust funds in mortgages it owned and in mortgages owned by an affiliated bond and mortgage company, was properly surcharged for the losses incurred by the trust. The court explained that the position of a trustee holding funds as a fiduciary for another person is so fraught with the potential for overreaching that "the prohibition against self-dealing or mingling of funds by a trustee does not depend upon any question of fraud, but is made absolute to avoid the possibility of fraud and to avoid the temptation of self-interest"; *Sloan* v. *Silberstein*, 2 Mich. App. 660, 141 N.W.2d 332 (1965), where an individual trustee was held to have breached his fiduciary duty when he sold to himself, as trustee, property owned by a corporation in which he had a substantial interest; *Merchants National Bank of Aurora* v. *Frazier*, 329 Ill. App. 191, 67 N.E.2d 611 (1946), and In Re Anneke's Trust, 229 Minn. 60, 38 N.W.2d 177, (1949), where a corporate trustee was held to have breached its fiduciary duty by purchasing property for the trust from an affiliate of the trustee.

[28] In addition to the cases cited in note 27, *supra*, see *Albright* v. *Jefferson County National Bank*, 292 N.Y. 31, 53 N.E.2d 753 (1944), where the court held that when a corporate trustee purchased securities for the trust from a company affiliated with the corporate trustee, "the cestui que trust is entitled to have the transaction set aside, irrespective of the reasonableness of the profit made or the commission charged and although the two corporations maintain separate corporate entities."

violation of section 4*o* of the Act for using pool funds to purchase commercial paper from its parent company and to make loans to its parent company in contravention of, among other things, the relevant partnership agreements.[30]

In light of the potential for use of pool funds in transactions with affiliates of the CPO that are disadvantageous to pool participants and of the widespread availability of alternative investment opportunities with unaffiliated parties, the Commission believes that a proscription of transactions with the CPO and affiliates of the CPO may be warranted and is unlikely to create any impediment to the use of commodity pool funds to achieve the lawful purposes of the pool. Such a restriction may have greater deterrence value than the more general fiduciary, anti-fraud, and anti-commingling standards referred to above and may also be considerably easier to enforce. Moreover, such a restriction would be consistent with measures adopted in other regulatory contexts to address the potential for conflicts of interest arising when funds held in a fiduciary capacity are used in transactions in which persons or firms related to the fiduciary are interested parties. Thus, for example, Section 17(a) of the Investment Company Act of 1940 (the "ICA") prohibits a registered investment company from, among other things, purchasing securities from or lending money to affiliated persons unless an exemptive order is first obtained from the Securities and Exchange Commission.[31] Moreover, under Section 17(a), an affiliated person of a registered investment company or of an affiliated person of the investment company is prohibited from knowingly purchasing securities or other property from any company controlled by such registered company.[32] Likewise, regulations of the Comptroller of the Currency prohibit a national bank from investing funds it holds as a fiduciary in stock or property acquired from the bank, affiliates of the bank, or officers, directors or employees of the bank or its affiliates,[33] and section 406(b)(1) of the Employment Retirement Income Securities Act of 1974 ("ERISA") prohibits a fiduciary from "deal[ing] with the assets of the Plan in his own interest or for his own account." [34]

Finally, proposed § 4.20(d) could have the added benefit of ensuring more orderly bankruptcy dispositions where a transaction between a CPO and a related entity gives rise to controversies in the context of a bankruptcy of an FCM, by eliminating ambiguity as to the liability of the FCM with respect to funds used for investments not held at the FCM. For example, pool participants in a commodity pool whose assets were used in transactions with an affiliate of the pool operator and the pool's clearing FCM may seek to assert claims against segregated funds held by the FCM for its customers to recover losses resulting from the affiliate transaction, thus potentially impeding the distribution of customers' segregated funds to customers with valid priority claims. Such claims, which would be based on the interrelationships among the pool operator, the FCM and the counterparty to the affiliated transaction and which would seek to hold the FCM responsible for the conduct of its affiliate, would not constitute a valid priority customer claim in the FCM bankruptcy yet could result in protracted litigation in the bankruptcy proceeding. Proposed § 4.20(d) would provide the clearing FCM's customers with more certainty regarding their claims against the segregated funds held by the FCM.

V. Proposed Paragraph (d) of § 4.20

Rule 4.20 currently prohibits CPOs from engaging in certain activities. Proposed paragraph (d) of Rule 4.20 would prohibit a CPO from using funds or property of any pool operated by such CPO to purchase assets of or securities issued by, and from lending money or other property of the pool to, the CPO or affiliated persons of the CPO.

The rule proposed by the Commission would preclude only transactions in which the CPO employs funds or property of a pool operated by such CPO to engage in transactions with the CPO or affiliated persons of the CPO. For purposes of the proposed rule, the term "affiliated person" would be defined, in a manner similar to the definition of the same term in the ICA,[35] to include persons directly or indirectly owning, controlling or holding ten percent of the ownership interest of the CPO or of any pool operated by the CPO; persons of which ten percent or more of the ownership interest is directly or indirectly owned, controlled or held by the CPO; any officer, director, partner, associated person or employee of the CPO; persons under common control with the CPO; and persons who have the power to exercise a controlling influence over the management or policies of the CPO. The Commission's proposed definition employs a ten percent ownership or control standard to define affiliated persons, rather than the five percent standard in the ICA, because this standard is more consistent with the existing definition of "principal" in part 4 of the Commission regulations. [36]

Paragraph (2) of proposed § 4.20(d) would exempt from the prohibition of paragraph (1) purchases of shares of investment companies that meet the conditions of 17 CFR 270.2a–7(c)(2), (c)(3) and (c)(4), promulgated pursuant to the Investment Company Act of 1940, which must be complied with for an investment company to use the term "money market" as part of its name or hold itself out to investors as a money market fund. This exemption thus would permit the use of pool funds to purchase shares in money market funds, which are subject to special restrictions as to permissible investments and diversification and which should not be subject to substantial fluctuations in value. The Commission invites comment with respect to the desirability of such an exemption and as to what criteria

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[30] Complaint, *CFTC* v. *Stotler Funds, Inc.*, Civil Action No. 90 C 4387 (N.D. Ill., July 31, 1990). The defendant, Stotler Funds, Inc., was a wholly-owned subsidiary of Stotler Group, Inc. ("Stotler Group") and the general partner and CPO of, among other pools, Compass Futures Fund ("Compass") and Advanced Portfolio Management, Limited Partnership ("Advanced"). The complaint included allegations that in December 1989, Compass used pool funds in the amount of approximately $4,550,000 (about 80% of its assets) to purchase commercial paper issued by Stotler Group and that Advanced used pool funds in the amount of approximately $1 million (about 10% of its assets) to make a loan to Stotler Group. The Disclosure Documents of Compass and Advanced did not disclose such uses of pool funds. The limited partnership agreement for Compass specifically precluded the use of pool funds to make loans.

[31] 15 U.S.C. 80a–17(a) (1988). See *U.S.* v. *Deutsch*, 451 F.2d 98 (2d Cir. 1971), *cert. denied*, 404 U.S. 1019 (1972), stating that the ICA was designed in part "to establish broad standards which would more easily enable the government to convict affiliated persons for self-dealing in the management of investment companies."

[32] See, *e.g.*, *SEC* v. *Advance Growth Capital Corporation*, 470 F.2d 40 (7th Cir. 1972) in which the Seventh Circuit held that the owners of 51% of the stock of a company controlled by an investment company were affiliated persons of an affiliated person of the investment company and could not purchase property from a partnership in which the controlled company held a one-third interest without first obtaining an exemption from the Securities and Exchange Commission.

[33] 12 CFR 9.12 (1990).

[34] 29 U.S.C. 1106(b)(1). See *Lowen* v. *Tower Asset Management*, 829 F.2d 1209 (2d Cir. 1987), in which the Court of Appeals for the Second Circuit held that a corporate investment manager violated section 406(b)(1) of ERISA by investing assets of a pension plan and an Individual Retirement Account for which he was a fiduciary in companies in which the investment manager's owner held a substantial equity interest.

[35] 15 U.S.C. 80a–2(a)(3) (1988).

[36] Section 4.10(e)(1990). See also § 155.1, 17 CFR 155.1 (1990).

should be used in paragraph (2) to describe money market funds whose shares should be exempted from the prohibition of the proposed rule.

Paragraph (3) of proposed § 4.20(d) would contain three additional exemptions that would permit (1) the repurchase of participations in a commodity pool from the pool's CPO or affiliates of the CPO, (2) a *pro rata* distribution of a pool's funds or assets to all shareholders of the pool where participants may not elect the specific assets they will receive and (3) the performance of a contract where at the time the contract was entered into and for six months prior thereto no affiliation existed that would preclude such contract under proposed § 4.20(d). These exemptions are modeled after section 17(a)(1)(A) of the ICA and Rules 17a–4 and 17a–5 thereunder, respectively.

Proposed § 4.20(d) should cause no curtailment of the types transactions a CPO may enter into on behalf of the pools it operates. The restriction would relate only to transactions with the CPO or with affiliates of the CPO and, where applicable, would be limited in effect to causing the CPO to seek a nonaffiliated party with whom to engage in a desired transaction. Absent extraordinary circumstances, which could be addressed through a petition for exemptive relief, the CPO should be able to conduct all desired transactions with non-affiliates.

The proposed rule is not intended to identify all transactions involving pool funds or property that are unlawful [37] or to address the general investment obligations of pool operators with respect to pool assets.

Proposed § 4.20(d) is not intended to preclude a CPO from using an affiliated person as an FCM to clear futures and commodity option transactions for a pool operated by the CPO. The proposed rule also would not preclude investment by a commodity pool in another pool operated by the same CPO or advised by a common CTA unless the CPO held a ten percent or greater ownership interest in the second pool. [38]

Paragraph (d) would be added to § 4.20 in part 4 of the Commission's regulations. Pursuant to § 4.12(a) the Commission may exempt any person from any provision of part 4 "if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought." Consequently, a CPO could avail itself of the general exemptive provision for part 4 contained in § 4.12(a) to request relief from § 4.20(d). Nonetheless, the Commission is seeking comment as to whether additional types of transactions should be specifically exempted from the prohibition of § 4.20(d) and as to why such exemptions are warranted. For example, although non-arms-length transactions have the potential to be conducted without benefit of competitive market pricing, in some situations such transactions may be undertaken in a competitively priced market and take place on terms consistent with those obtained in arms-length transactions. What specific criteria should be considered by the Commission as a basis for specific exclusions from the proposed rule?

The Commission requests comment as to whether a proscription of the nature of proposed § 4.20(d) is appropriate and as to the extent to which it can reasonably be assumed that the benefits of such provision will outweigh any costs that may result from such a prohibition to commodity pool participants. The Commission also requests comment as to whether any safeguards, in addition to or in lieu of proposed § 4.20(d), with respect to the regulation, design or governance of commodity pools or CPOs or the custody or investment of commodity pool funds are appropriate. Pursuant to section 10(a) of the ICA no more than 60 percent of the members of the board of directors of a registered investment company may be interested persons of such company. [39] Section 17(f) of the ICA requires a registered management investment company to maintain its securities and other investments in the custody of, among others, banks and companies which are members of a national securities exchange. Registered management investment companies are also allowed to deposit their securities in a system for the central handling of securities established by a registered national securities exchange or a national securities association. [40] As noted *supra*, FCMs are also subject to strict requirements with respect to the investment of customer funds not deposited as margin for futures transactions. [41] The Commission is requesting comment as to whether similar provisions with respect to the independence of the general partners or directors of commodity pools or CPOs and with respect to the custody or investment of funds and participations in commodity pools should be considered.

Comment is also requested as to whether transactions involving funds of closely-held non-public pools need to be included within the prohibitions of proposed § 4.20(d) where all participants in the pool have given written consent to the transactions. Specifically, comment is requested on whether an exemption as to such transactions would be appropriate and on whether limited partners of closely-held non-public pools might imperil their limited liability under state law when consenting to transactions that would otherwise be prohibited pursuant to § 4.20(d). The Commission also requests comment as to whether there are some transactions as to which even consent would not be sufficient to provide insulation from challenge as equivalent to commingling or as otherwise wrongful.

Finally, the Commission is requesting comment as to whether specific provisions should be included in the proposed rule with respect to tiered pools.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. Proposed § 4.20(d) would affect registered CPOs as well as CPOs who are exempt from registration.

The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA. [42] Commission has determined that registered CPOs are not small entities for the purpose of the RFA. [43]

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[37] Naturally, proposed § 4.20(d) would not relieve a CPO entering into a transaction on behalf of a pool it operates from its common law fiduciary duties to pool investors or from any of its other duties under the Act and Commission regulations. (See note 27 *supra* and accompanying text)

[38] Proposed § 4.20(d) also is not intended to preclude sales or purchases of merchandise conducted between a commodity pool and its CPO or affiliated persons of the CPO in the ordinary course of business or lessor-lessee relationships entered into among a commodity pool and its CPO or affiliated persons of the CPO in the ordinary course of business and the furnishing of services incident thereto

[39] 15 U.S.C. 10(a) (1988). The term "interested person" is defined in section 2(a)(19) of the ICA, when used with respect to an investment company, to include, among others, an affiliated person of such company, any person who within the last two fiscal years has acted as a legal counsel for such investment company, any interested person of any investment adviser of or principal underwriter for such company and any registered broker or dealer or any affiliated person of such broker or dealer.

[40] 15 U.S.C. 17(f) (1988).

[41] See Note 23, *supra* and accompanying text.

[42] 47 FR 18618–18621 (April 30, 1982).

[43] 47 FR 18619–18620.

As for persons exempt from registration as a CPO, such analysis may be required. The Commission does not believe, however, that proposed § 4.20(d) should have a significant economic impact on such exempt CPOs because proposed § 4.20(d) does not prohibit any type of transaction; it only prohibits transactions with certain parties, *i.e.*, affiliated persons. No restrictions would be imposed upon transactions with persons other than affiliated persons.

Accordingly, pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Commission, nonetheless invites comment from any CPO which believes that this rule would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.

In compliance with the Act the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. While this proposed rule has no burden the group of rules of which this is a part has the following burden:

Average Burden Hours per Response.....30.6
Number of Respondents.....3,060
Frequency of Response.....40

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a and 19, 7 USC 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23, the Commission hereby proposes to amend Part 4 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

Subpart B—Commodity Pool Operators

2. Section 4.20 is proposed to be amended by adding paragraph (d) to read as follows:

§ 4.20 Prohibited activities.

* * * * *

(d)(1) No commodity pool operator may knowingly use the funds or property of a commodity pool it operates to purchase assets of or securities issued by, or to lend money or other property to such commodity pool operator or an affiliated person of such commodity pool operator.

(2) Paragraph (d)(1) of this section shall not apply to purchases of shares of investment companies that meet the conditions of 17 CFR 270.2a–7(c)(2), (c)(3) and (c)(4) under the Investment Company Act of 1940.

(3) Notwithstanding paragraph (d)(1) of this section:

(i) A commodity pool operator may, on behalf of a commodity pool it operates, repurchase participations in such commodity pool from such commodity pool operator or from an affiliated person of such commodity pool operator.

(ii) A commodity pool operator may, on behalf of a commodity pool it operates, effect a *pro rata* distribution in cash or in kind among the participants in such commodity pool where no participant, including the commodity pool operator or any affiliated person thereof, is given any election as to the specific assets which such participant will receive.

(iii) A commodity pool operator may use the funds of a commodity pool it operates in transactions pursuant to a contract if at the time of the making of the contract and for a period of at least six months prior thereto no affiliation or other relationship existed which would operate to make such contract or the subsequent performance thereof subject to the provisions of paragraph (d)(1) of this section.

(4) For the purposes of this paragraph (d) the term *affiliated person of a commodity pool operator* shall mean:

(i) Any person directly or indirectly owning, controlling, or holding ten percent or more of the outstanding ownership interest in the commodity pool operator or in any pool operated by the commodity pool operator;

(ii) Any person of which ten percent or more of the outstanding ownership interest is directly or indirectly owned, controlled, or held by the commodity pool operator;

(iii) Any officer, director, partner, associated person or employee of the commodity pool operator;

(iv) Any other person who has the power to exercise a controlling influence over the management or policies of the commodity pool operator; and

(v) Any person that is under common control with the commodity pool operator.

Issued in Washington, DC on September 27, 1991, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–23744 Filed 10–2–91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM91–11–000]

Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations

Issued September 25, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of time for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is postponing the deadline for filing comments on the Notice of Proposed Rulemaking (NOPR) issued in these proceedings on July 31, 1991 (56 FR 38,372 (Aug. 13, 1991)). The postponement was granted in response to a motion by the American Gas Association and the Interstate Natural Gas Association of America for a 30-day extension of the deadlines.

DATES: The deadline for filing comments is changed from September 30, 1991, until October 15, 1991. The deadline for filing replies is postponed from October 30, 1991, until November 15, 1991.

ADDRESSES: Comments should be filed with the Federal Energy Regulatory Commission, Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffery Braunstein, Office of the General Counsel; (202) 208–2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register,** the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington DC.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

Order Granting in Part Joint Motion for Extension of Time for Filing Comments and Reply Comments

Issued September 25, 1991.

On September 19, 1991, the American Gas Association and the Interstate Natural Gas Association of America filed a joint motion for a 30-day extension of the dates governing the filing of initial and reply comments so that initial comments would be due on October 30, 1991, and reply comments on November 29, 1991. The joint movants state that the extension of time will permit interested persons to make the thoughtful and comprehensive presentations needed to best inform the Commission about the realities of the proposed restructuring.

In considering these requests, the Commission recognizes that the natural gas industry has been on notice for considerable time that the Commission intended to take generic action in a rulemaking with respect to the matters covered by the July 31, 1991 Notice of Proposed Rulemaking (NOPR). On November 28, 1990, the Commission gave notice of a public conference with respect to the designing of interstate natural gas pipeline rates and received written comments. That conference was held on January 25, 1991. In addition, the staff first presented the Commission a draft notice of proposed rulemaking, covering many of the topics covered in the July 31 NOPR, at the Commission's December 12, 1990 public meeting. The Commission discussed the proposed rulemaking at that meeting and again at its public meeting on January 14, 1991. Moreover, on February 13, 1991, the Commission issued Order No. 500–J,[1] in which it stated:

> The Commission is considering, and indeed has discussed at two Commission meetings, the issuance of a notice of proposed rulemaking on the subject of the comparability of service between a pipeline's transportation services provided under Part 284 of the Commission's regulations and the pipeline's sales services. As part of the Commission's consideration of service comparability, the Commission intends to examine issues with respect to the future role that pipelines should play in the sale of natural gas. This examination will delve into issues concerning how, in what form, and under what circumstances pipelines should stand ready to sell gas. That is, what should be a pipeline's service obligation as a merchant of natural gas? [2]

Thereafter, on April 11, 1991, the Commission issued a notice of public conference with respect to pipeline service obligations and revisions to the Commission's regulations governing self-implementing transportation under part 284 of the Commission's regulations. That notice included as an appendix a staff paper on issues related to the service obligations of interstate natural gas pipelines that suggested many of the regulatory changes proposed in the July 31 NOPR. The Commission received written comments on the issues discussed in the staff paper in connection with the public conference, which was held on May 10, 1991, both before and after the conference. Finally, on July 31, 1991, the Commission issued the instant NOPR, which does not significantly differ from the matters pursued since January of 1991. Therefore, as a general matter the Commission believes that the public and industry members have had sufficient time to formulate positions on the NOPR, and that a 30–day extension of time is unwarranted.

However, the Commission will grant a one-time, 15–day extension for initial and reply comments, in light of the fact that the extension request has come from associations that represent significant segments of the natural gas industry together with several state regulatory agencies. We emphasize that this one-time extension for initial and reply comments will not be a factor affecting consideration of the proposed implementation schedule. (See proposed § 284.8(f)(4).

The Commission orders: The joint motion is granted in part so that Initial Comments are due on October 15, 1991, and Reply Comments are due on November 15, 1991.

By the Commission. Commissioner Moler concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

Issued September 25, 1991.

Moler, Commissioner, *concurring:*

I concur with the Commission's decision to extend the comment deadline in this proceeding.

In all candor, I would prefer to grant the joint motion for a full 30–day extension of time.

The Commission has regulated the natural gas industry for more than 50 years. The Mega-NOPR proposes sweeping changes in our regulatory scheme. The order today recounts the deliberations that led to issuance of the Mega-NOPR. But the fundamental point I would make is that the industry had not seen the Commission's proposed policy in writing until July 31, 1991. As far as I am concerned, as a matter of equity and comity we should grant the motion and allow the industry the time necessary to clearly and fully address the sweeping changes proposed.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 91–23766 Filed 10–2–91; 8:45 am]

BILLING CODE 6717–01–M

[1] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs. ¶ 30,915 (1991).

[2] Id. at p. 30,082. [Footnote omitted.]

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503 and 552

[GSAR Notice 5–317]

General Services Administration Acquisition Regulation; Standards of Conduct for Technical Support Contractors

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule

SUMMARY: The notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would add section 503.101–70 to provide definitions, a policy statement, and a prescription for use of a contract clause regarding standards of conduct for

contractors providing technical support services to GSA; and add section 552.203–XX to provide the text of the clause.

DATES: Comments are due in writing on or before November 4, 1991.

ADDRESSES: Comments should be submitted to Marjorie Ashby, Office of GSA Acquisition Policy (VP), 18th and F Streets NW., room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Lynch, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A Background

Over the past ten years, GSA has placed a greater reliance on contractors and their employees to support Government personnel in reviewing and evaluating proposals submitted by other contractors or prospective contractors and in inspecting and monitoring the performance of other contractors. These technical support service contractors and their employees occupy positions of trust and grave responsibility which demand that they maintain the highest ethical standards in order to avoid any appearance of a conflict of interest.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

C. Regulatory Flexibility Act

The proposed rule does not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it simply requires contractor providing technical support services to GSA to adopt standards of conduct for employees performing certain types of work under the contracts. Therefore, an initial regulatory flexibility analysis has not been performed. Comments from small entities concerning the affected GSAR sections will be considered in accordance with the section 610 of the Act.

D. Paperwork Reduction Act

This proposed rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 e. seq.

List of Subjects in 48 CFR Parts 503 and 552

Government procurement.

It is proposed that 48 CFR parts 503 and 552 be amended to read as follows:

1. The authority citation for CFR parts 503 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 503.101–70 is added to read as follows:

503.101–70 Standards of conduct for technical support contractors.

(a) *Definitions. Conflict of interest* means a situation in which a duty to one leads to disregard of a duty to another. A conflict of interest exists when some outside influence affects or may affect the ability of a technical support contractor or its employee(s) to make an unimpeded, independent decision or recommendation to the Government in a particular situation or when a technical support contractor or its employee(s) owes duties entities whose interests conflict with the Government's interests.

Technical support service means services performed by a contractor that involve reviewing or evaluation proposals submitted by another contractor or prospective contractor or that involve reviewing, inspecting or evaluating work performed by another contractor.

(b) *Policy.* Contractors and their employees providing technical support services to GSA occupy positions of trust that require them to observe the highest ethical standards. Government business must be conducted with complete impartiality and in a manner that is above reproach without preferential treatment except as authorized by statute or regulations. Situations which constitute an actual or perceived conflict of interest must be avoided.

. (c) *Contract clause.* The contracting officer shall insert the clause at 552.203–XX, Standards of Conduct for Technical Support Contractors, in solicitations and contracts for technical support services (see definition in paragraph (a) above).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 552.203–XX is added to read as follows:

552.203–XX Standards of Conduct for Technical Support Contractors

As prescribed in 503.101–70(c), insert the following clause:

Standards of Conduct for Technical Support Contractors (XXX 1991)

(a) *Definitions. Conflict of interest,* as used in this clause, meals a situation in which a duty to one leads to disregard of a duty to another. A conflict of interest exits when some outside influence affects or may affect the ability of a technical support contractor or its employee(s) to make an unimpeded, independent decision or recommendation to the Government in a particular situation or when a technical support contractor or its employee(s) owes duties to separate entities whose interests conflict with the Government's interest.

Contractor, as used in this clause, means the Contractor, any of its affiliates, the Contractor or its affiliate's successors in interest, or other entities in which the Contractor has a financial interest, consultants and subcontractors at any tier.

Employee, as used in this clause, means an employee of the Contractor directly engaged in the performance of technical support services under this contract.

Gratuity, as used in this clause, means any gift, favor, entertainment, or other item having monetary value. This includes services, conference fees, vendor promotional training, transportation, lodging and meals, as well as discounts not available to the general public and loans extended by anyone other than a bank or financial institution. It does not include includes services, conference fees, vendor promotional training, transportation, lodging and meals, as well as discounts not available to the general public and loans extended by anyone other than a bank or financial institution. It does not include anything for which market value is paid by the employee, or on his/her behalf, by someone other than the Contractor, or a representative, agent, or consultant of the Contractor he/she is responsible for overseeing; anything which is paid for by the Government, secured under Government contract, or accepted by the Government under specific statutory authority; plaques or certificates having no intrinsic value; or any unsolicited item other than money having a market value of $10 or less per event or presentation.

Technical support service, as used in this clause, means services performed by the Contractor that involve reviewing or evaluation proposals submitted by another Contractor or prospective Contractor or that involve reviewing, inspecting or evaluating work perform by another contractor.

(b) *General.* The Contractor shall ensure that employees providing technical support services under this contract conduct themselves in a manner above reproach with complete impartiality and with preferential treatment for none. This clause in no way alters, amends, or diminishes the requirements of FAR clause 52.203–13, Procurement Integrity-Service Contracting, if it is included in this contract.

(c) Agreement. (1) The Contractor agrees that employees providing technical support services under this contract have positions of trust and grave responsibility that require them to observe the highest ethical standards of conduct. The Contractor further agrees that

its employees directly engaged in the performance of technical support services under this contract will not:

(i) Allow themselves to be placed in a position in which an actual or perceived conflict of interest might arise or might justifiably be suspected.

(ii) Engage in any personal, business or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict or apparent conflict between their private interests and the public interests of the United States related to their duties or responsibilities of their position.

(iii) Use, directly or indirectly, inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their position.

(iv) Use their positions to induce, coerce, or in any manner influence any person, including subordinates to provide any improper benefit, financial or otherwise, to themselves or others.

(v) Solicit, accept or agree to accept any gratuity for themselves, members of their families, or other, either directly or indirectly from or on behalf of a GSA contractor and to report the offering of such gratuity to his/her employer and to the Contracting Officer.

(2) The Contractor further agrees to ensure that all employees directly engaged in the performance of technical support services are instructed in and understand the prohibitions outlined in this clause.

(d) Subcontracts. The Contractor shall include and require subcontractors to include this clause, including this paragraph, in subcontracts which involve performance of technical support services. The term "Contractor" and "employee" shall be appropriately modified.

(e) Remedies. For breach of any of the above prohibitions, the Government may require the removal of an employee from the contract, terminate the contract for default, disqualify the Contractor for subsequent related contract efforts and pursue such other remedies as may be permitted by law or this contract.

(End of clause)

Dated: September 23, 1991.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91–23799 Filed 10–2–91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Delta Smelt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine the delta smelt (*Hypomesus transpacificus*) to be a threatened species, pursuant to the Endangered Species Act of 1973, as amended (Act). This osmerid fish species occurs only in Suisun Bay and the Sacramento-San Joaquin estuary (the Delta) near San Francisco Bay, California. The delta smelt has declined nearly 90 percent over the last 20 years, and is primarily threatened by large freshwater exports of Sacramento River and San Joaquin River outflows for agriculture and urban use. The prolonged drought, introduced nonindigenous aquatic species, and agricultural and industrial chemicals also threaten this species.

This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for the delta smelt. The Service seeks all available data and comments from the public regarding this proposal.

DATES: Comments from all interested parties must be received by January 31, 1992. Public hearing requests must be received by November 18, 1991.

ADDRESSES: Comments and materials concerning this proposal should be submitted to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: A. Keith Taniguchi (see **ADDRESSES** section) at 916/978–4866 or FTS 460–4866).

SUPPLEMENTARY INFORMATION:

Background

The delta smelt was originally classified as the same species as the pond smelt (*Hypomesus olidus*), but Hamada recognized the delta smelt as a distinct species in 1961 (cited in Moyle 1976, 1980). Hamada retained the name *H. olidus* for the delta smelt and renamed the pond smelt *H. sakhalinus*. In 1963 McAllister renamed the delta smelt from *H. olidus* to *H. transpacificus*, with a Japanese subspecies (*H. t. nipponensis*) and a California subspecies (*H. t. transpacificus*). More recent taxonomic work has shown that these subspecies should be recognized as species, the delta smelt being *H. transpacificus* and the Japanese smelt being *H. nipponensis* (Moyle 1980).

The delta smelt was described as follows by Moyle *et al.* (1989): A slender-bodied fish typically 60–70 mm (2.36–2.76 in) in standard length (SL), although a few may attain 120 mm (4.73 in) SL. Live fish are nearly translucent and have a steely-blue sheen to their sides. Occasionally there may be one chromatophore between the mandibles, but usually none is present. Its mouth is small, with a maxilla that does not extend past the mid-point of the eye. The eyes are relatively large; the orbit width is contained about 3.5–4 times in the head length. Small, pointed teeth are present on the upper and lower jaws. The first gill arch has 27–33 gill rakers and there are 7 branchiostegal rays. There are 9–10 dorsal fin rays, 8 pelvic fin rays, 10–12 pectoral fin rays, and 15–17 anal fin rays. The lateral line is incomplete and has 53–60 scales along it. There are 4–5 pyloric caeca.

Length-frequency data validate that the delta smelt is primarily a species with a 1–year (annual) life span (Moyle *et al.* In Press). Juvenile delta smelt are 40–50 mm (1.58–1.97 in) fork length (FL) by early August. They become sexually mature adults when 55–70 mm (2.17–2.76 in) FL. They rarely grow larger than 80 mm (3.15 in) FL (the largest smelt on record is 126 mm (4.96 in) FL). Delta smelt longer than 50 mm (1.97 in) FL are rare throughout their range by the following June because adult delta smelt die after spawning.

Historically, the delta smelt occurred from Suisun Bay and upstream to the town of Isleton on the Sacramento River and Mossdale on the San Joaquin River. It is the only smelt endemic to California and the only true native estuarine species found in the Delta (Moyle *et al* 1989, Stevens *et al.* 1990, Moyle *et al.* In Press, Wang 1986). The delta smelt is a euryhaline species (species adapted to living in fresh and brackish water) that occupies estuarine areas with salinities below 2 grams per liter (parts per thousand, ppt), rarely occurring in estuarine waters with more than 10–12 ppt salinity, about one-third sea water (Ganssle 1966 in Moyle 1976).

In proposing to designate critical habitat (see "Critical Habitat" section), the Service identified those areas within the Sacramento-San Joaquin River Delta that contain the constituent elements required by the delta smelt for successful survival and reproduction. Constituent elements for the delta smelt include space for population growth, cover or shelter, feeding areas, littoral zone habitat for reproduction and rearing of juveniles, and appropriate salinity levels for survival and reproduction. A review of the available information indicates that these constituent elements are found in the

Delta estuary in an area which extends past Isleton on the Sacramento River, (to the Delta cross channel, near Walnut Grove), to the north, and south along the San Joaquin and Middle River to the south end of Bacon Island to the south (see map). The area being proposed for critical habitat, although not identical to the documented historic range of the delta smelt, includes those areas that currently contain the constituent elements essential for the conservation of this species. Preliminary data indicate that delta smelt occur in areas outside the documented historic range of the species (P. Moyle, pers. comm.). These areas are therefore included in the proposed critical habitat designation.

Delta smelt historically congregated in upper Suisun Bay and Montezuma Slough (mainly during March to mid-June) when the Sacramento and San Joaquin River flows were high. During very high river outflows some smelt may be washed into San Pablo Bay, but the rapidly restored higher salinities do not allow permanent populations of delta smelt to become established there. Because of substantial human-caused changes in the relative ratios of seasonal freshwater outflows, the center of delta smelt abundance, since 1982, has shifted to the Sacramento River channel in the Delta. Delta smelt are now rare in Suisun Bay, and virtually absent from Suisun Marsh where they once were seasonally common (Moyle *et al.* 1989). Even though suitable spawning and nursery habitat now occur less frequently in Suisun Bay than previously, suitable conditions, when they are present, provide for increased levels of delta smelt recruitment that augment overall population levels.

Delta smelt have a low fecundity, about 1,400–2,800 eggs per female, relative to two other species of Osmeridae occurring in California that exhibit fecundities from 5,000–25,000 eggs per female (Moyle 1976). Delta smelt spawn in freshwater at temperatures from about 7–15 °C between February and June. Most spawning occurs in the dead-end sloughs and shallow edge-waters of channels in the Delta; spawning also has been recorded in Montezuma Slough near Suisun Bay and far upstream in the Sacramento River near Rio Vista (Radtke 1966, Wang 1986). The adhesive demersal eggs attach to hard substrates such as rocks, gravel, tree roots, and submerged branches. Based on data for closely related species, delta smelt eggs probably hatch in 12–14 days. The planktonic larvae either are transported downstream to the mixing zone, or hatch there. Within the mixing zone, the pelagic larvae are zooplanktivores and feed on copepods, cladocerans, and amphipods. The primary food for all life stages of the delta smelt are the nauplius, copepodite, copepodid, and adult stages of the euryhaline copepod *Eurytemora affinis*. Adult smelt consume *E. affinis* during all times of the year. The opossum shrimp (*Neomysis mercedis*) is secondarily important as food for adult smelt, and cladocerans (*Daphnia* sp., *Bosmina* sp.) are consumed seasonally by adult smelt.

Available data indicate the decline in the delta smelt population has been concurrent with increased human changes to seasonal Delta hydrology, freshwater exports, and the accompanying changes in the temporal, spatial, and relative ratios of water diversions. These altered hydrological effects, coupled with severe drought years and introduced nonindigenous aquatic species, appear to have reduced the species' capacity to recover from natural seasonal fluctuations in hydrology for which it was adapted.

Many introduced species may adversely affect all life stages of the delta smelt. These introduced species compete for the zooplankton for food, or alter the species composition of the zooplankton community, thereby further decreasing the ability of the delta smelt population to recover.

In 1987 the Service funded an analysis of survey data (Moyle and Herbold 1989). These survey data were collected from Suisun Marsh and the Delta by the University of California, Davis, and the California Department of Fish and Game. The report concluded that: (1) Freshwater flows set an upper limit to delta smelt stock recruitment within the year, (2) other environmental factors (physical and/or biological) may further depress the smelt population, however, the proportion of time when water flows are reversed (upstream flow) in the lower San Joaquin River during the egg and larval stages probably is the major source of density-independent mortality to the delta smelt, and (3) a larger adult smelt population was associated with higher freshwater outflows because these flows produced higher plant and animal biomasses at all aquatic trophic levels.

Previous Service Action

In a letter dated May 7, 1990, the California-Nevada Chapter of the American Fisheries Society expressed its concern to the Service that increased water exports and diversions from the Delta Region, coupled with California's drought conditions, have critically endangered the delta smelt. Although not a formal petition, they recommended expeditious Federal listing of this species as an endangered species pursuant to the Act.

The Service included the delta smelt as a category 1 candidate species in the January 6, 1989, Animal Notice of Review (50 FR 554). Category 1 species are species for which data in the Service's possession are sufficient to support proposals for listing. On June 29, 1990, the Service received a petition dated June 26, 1990, from Dr. Don C. Erman, President-Elect of the California-Nevada Chapter of the American Fisheries Society, to list the delta smelt as an endangered species with critical habitat. The Service made a 90-day finding that substantial information had been presented indicating that the petitioned action may be warranted, and announced this decision in the **Federal Register** on December 24, 1990 (55 FR 52852). The Service initiated a status review at that time. During the status review, the Service examined the available data on the early life history and ecology of this species. Available data on physiological tolerances and estuarine factors were also examined in relation to actual or potential threats to the delta smelt. Primary sources of information describing the many human factors and projects that may affect the Delta smelt are the expert testimonies presented to the California State Water Resources Control Board's 1987 Water Quality/Water Rights Proceeding on the San Francisco Bay and Sacramento-San Joaquin River Delta. This proceeding is also known as the Bay-Delta Proceeding. Evidentiary Hearing Record, July 7–December 29, 1987. The exhibits and transcripts spanned 54 days of hearings. Comments received by the Service on the petitioned action were also considered during the status review. This proposed rule constitutes the final affirmative finding for the petitioned action, in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened because of one or more of the five factors described in section 4(a)(1). These factors and their application to the delta smelt (*Hypomesus transpacificus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The delta smelt was one of the most common and abundant pelagic fish caught by California Department of Fish and Game trawl surveys in the Delta during the early 1970s (Stevens and Miller 1983, Moyle *et al.* 1989, Stevens *et al.* 1990). Its distribution once ranged from Suisun Bay upstream to Isleton on the Sacramento River and to Mossdale on the San Joaquin River (Radtke 1966, Moyle 1976, Moyle *et al.* 1989). Smelt populations did fluctuate a great deal in the past, but by 1982 the population had declined precipitously. Over the last 20 years, the population has experienced a ten-fold decline—from 2,600,000 to 280,000 individuals. Since 1982 the delta smelt population has remained relatively stable, but at low levels. The 1989 and 1990 populations have not shown any significant signs of recovery (Moyle and Herbold 1989, Moyle *et al.* 1989, Moyle *et al.* In Press, Stevens *et al.* 1990).

Much of the available data on the population dynamics of the delta smelt were obtained from studies focused on other fish species, such as striped bass (*Morone saxatilis*) and chinook salmon (*Oncorhynchus tshawytscha*). Consequently, the collection methods used in these studies were not designed to estimate the delta smelt population. The Service acknowledges this in the available database for the delta smelt. However, the data do indicate that this species has experienced a significant population decline over the past 10 years, that no apparent recovery is occurring, and the factors that have degraded the delta smelt's habitat continue to occur.

This species' pelagic life history, dependence on pelagic microzooplankton, 1-year life span, and low fecundity are characteristics of a fish species that will be affected greatly by perturbations to its reproductive habitat or larval nursery areas. It is especially affected during critical protracted drought periods, which will be exacerbated if there are additional alterations in hydrology caused by reductions of freshwater inflows to the Delta or by altered timing and/or duration of water exports. A weak stock-recruitment relationship, i.e., little evidence of the effect of parent population size on the offspring population size, strongly suggests that environmental or habitat factors may severely limit delta smelt abundance, even during those years when adults may be extremely abundant (Moyle *et al.* In Press).

Moyle *et al.* (1989) reported multiple and synergistic causes of the delta smelt decline in the following order of importance: (1) Reduced river outflows, primarily in the Sacramento and San Joaquin Rivers and their tributaries, (2) too high of a river outflow in years with unusually high rainfalls, (3) entrainment mortality caused by water diversion projects, (4) human and natural perturbations to the smelt's food web, (5) presence of toxic substances in the aquatic habitat (e.g., agricultural and industrial chemicals, heavy metals, etc.), and (6) loss of genetic integrity because of a sharply curtailed delta smelt population and because this curtailed population may become displaced by the wagasaki, or Japanese smelt (*Hypomesus nipponensis*), which was inadvertently introduced into reservoirs of the Sacramento River drainage by the California Department of Fish and Game (Moyle 1976).

Delta water diversions and exports presently total up to about 8 to 9 million acre-feet per year, excluding the upstream diversions. State and Federal projects export about 6 million acre-feet per year, and private local projects divert about 2 to 3 million additional acre-feet per year. Since 1983, the proportion of water exported from the Delta during October through March has been higher than in earlier years (Moyle *et al.* In Press). These proportionally higher exports have been conducted during the delta smelt's spawning season. Federal and State water diversion projects in the southern Delta export, by absolute volume, mostly Sacramento River water and some San Joaquin River water. At low to moderate river outflows, however, essentially all of the San Joaquin River water goes to the southern Delta where the large pumping plants are located. The State's Banks Pumping Plant presently exports freshwater at rates up to 6,400 cfs. The U.S. Bureau of Reclamation's Tracy Pumping Plant can export water at rates up to 4,600 cfs. In addition, local private diverters export up to 5,000 cfs from about 1,800 diversions scattered throughout the Delta.

When total diversion rates are high relative to Delta inflows, the lower San Joaquin River and other channels have a net upstream or reverse flow (Moyle *et al.* In Press, Moyle and Herbold 1989, Stevens *et al.* 1990). Reverse flows disorient out-migrating larval and juvenile fish of many species and result in large mortalities because of entrainment at the various pumping plants and other water diversion sites. Riverine and estuarine outflow are required for larvae and juvenile fish to migrate through the estuarine and bay ecosystems.

In recent years, the number of days of reversed San Joaquin River flow have increased, particularly during the February-June spawning months for delta smelt (Moyle *et al.* In Press). All size classes of delta smelt suffer mortalities when they are entrained by the pumping plants and diversions in the south Delta. This species' embryonic, larval, and postlarval mortality rates become higher as western Delta reversed river flows increase the salinity level and act to relocate the mixing zone.

The delta smelt is adapted for life in the mixing zone (brackish water/freshwater entrapment zone) of the Sacramento-San Joaquin estuary. The estuary is an ecosystem where the mixing zone and salinity levels are determined by the interaction of river inflow and tidal action. Moyle *et al.* (In Press) reported that delta smelt were most abundant in shallow, low salinity water associated with the mixing zone, except when they spawned. Their analysis showed that smelt were collected from water with a mean salinity of 2 ppt with a mean temperature of 15 degrees Celsius (°C), but found in salinities ranging from 0–14 ppt at temperatures ranging from 6–23 °C. The larvae require the high microzooplankton densities produced by the mixing zone environment. The best survival and growth of smelt larvae occur when optimum conditions in the mixing zone occupy a large area that includes extensive shoal regions containing suitable spawning substrates within the euphotic zone (depths less than 4 m). Sixty-two percent of delta smelt collected in Suisun Bay occurred at 3 sampling stations with depths less than 4 m; the remaining 38 percent were caught at 6 deeper stations.

During periods of drought and increased water diversions, the mixing zone and associated smelt populations are translocated farther upstream in the Delta. During years prior to 1984, the mixing zone was located in Suisun Bay during October through March (except in months with exceptionally high outflows or during years of extreme drought). From April through September, the mixing zone usually was found upstream in the channels of the rivers. Since 1984, the mixing zone has been located primarily in the river channels during the entire year, with the exception of the record flood outflows of 1986, because of increased water exports and diversions. Upstream, the mixing zone becomes confined to the deep river channels, becomes smaller in

total surface area, contains very few shoal areas of suitable spawning substrates, may have swifter, more turbulent water currents, and lacks the high zooplankton productivity. Delta smelt reproduction likely is adversely affected by the mixing zone now being situated in the main channels of the Delta (Moyle *et al.* In Press). In 1982 the delta smelt population declined in response to the shifted location of the mixing zone. In all respects, the upstream river channels are much less favorable for the spawning and survival of the smelt. The decline of the delta smelt population since 1982 has been concurrent with the increasing number of water project diversions that have confined the mixing zone to the deep, less productive channels in the lower rivers.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The delta smelt may be harvested as a non-target by-catch in commercial bait fisheries for other baitfish species. Some scientific collecting is conducted for the delta smelt; however, these activities do not appear to be adversely affecting this species. Native Americans historically harvested delta smelt for food, but modern Native Americans are not known to be harvesting this fish. There are no recreational or educational uses of this animal that may affect the delta smelt population.

C. Disease or Predation

Disease and predation are not known to be factors that threaten the delta smelt. However, a growing striped bass population may cause an increase in striped bass predation on all size classes of the delta smelt. An effort by the California Department of Fish and Game is underway to compensate for striped bass population mortalities caused by water export projects. The 1991 striped bass stock was very low relative to the population in the 1960s. The striped bass compensation program annually releases 1–2 million juvenile hatchery-reared striped bass in the estuary in an effort to rebuild the population.

D. The Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms currently in effect do not provide adequate protection for the delta smelt or its habitat. This species is not listed by the State of California, and the Federal Government offers no protection on Federal lands beyond that which applies to wildlife in general on such lands. The California Fish and Game Commission ruled a petition to State list the species as unwarranted on August 30, 1990. It did not accept the California Department of Fish and Game's recommendation to State list the delta smelt as a threatened species (Stevens *et al.* 1990). State listing would have provided some measure of protection to the species because State agencies would have been required to consult with the California Department of Fish and Game if any project they funded or carried out would adversely affect the delta smelt. However, even if California had listed the delta smelt, the species would not have been protected from the adverse effects of Federal actions.

Suisun Bay is the best known nursery habitat for this fish's reproduction and larval survival, but the habitat has been altered because of higher than normal salinities in spring. These higher salinities are caused by the large number of freshwater diversions which allow brackish seawater to intrude farther upstream. At present, there are relatively few periods when freshwater outflow volumes through the Delta and Suisun Bay of any significance are mandated for wildlife or fisheries. Federal and State agencies had planned to increase 1991, and probably 1992, water supplies for out-of-stream uses at the expense of environmental protection of estuarine fish and wildlife resources in the fifth, and potentially sixth years, of drought (Morat 1991). Because of significantly higher than normal precipitation and subsequent higher instream flows during March, 1991, a State agency request for relaxation of Delta water quality standards was withdrawn. It is likely, should the severe California drought continue, that this water quality relaxation action would be requested again in the near future to favor out-of-stream water use over the need to protect aquatic habitats for fish and wildlife. At present, there are no regulatory mechanisms that require consistent low salinities in important delta smelt estuarine habitats.

Present regulatory processes do not ensure that water inflows to Suisun Bay and the western Sacramento-San Joaquin estuary will be adequate to maintain the mixing zone near or in Suisun Bay for the sustenance of wildlife and their habitats. The California State Water Resources Control Board (Board) has the authority to condition or require changes in the amount of water inflow and the amount of water exported or diverted from the Delta. However, the Board has not taken action to improve the water flow and/or water quality of the Delta to protect aquatic and other wildlife, including candidate species for listing under the Act. Any action by the Board may occur too late to prevent the further endangerment and potential extinction of the delta smelt in the Sacramento-San Joaquin estuary ecosystem. December 1992 is the estimated completion date for the Board's water quality plan. The Service testified at the Board's Water Quality/Water Rights Hearings in 1987 and recommended that the delta smelt be added to the Animal Notice of Review as a category 1 candidate species (Lorentzen 1987). The Board has not taken regulatory or legal action to protect this animal or its habitat during the 4 years since the Service expressed its concern for several species of the Sacramento-San Joaquin estuary. Therefore, the Service considers the existing regulatory mechanisms inadequate for assuring the long-term existence of delta smelt in Suisun Bay and the Delta.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The delta smelt is vulnerable because of its short (1-year) life span and its present small population size. The limited gene pool may result in depressed reproductive vigor and loss of genetic variation.

Poor water quality also may be a threat. All major rivers in this species' historic range are exposed to large volumes of agricultural and industrial chemicals that are applied in the California Central Valley watersheds (Nichols *et al.* 1986). Agricultural chemicals and their residues find their way into the rivers and estuary. Toxicology studies of rice field irrigation drain water of the Colusa Basin Drainage Canal documented significant toxicity of drain water to striped bass embryos and larvae, medaka larvae, and the major food organism of the striped bass larvae and juveniles, the opossum shrimp (*Neomysis mercedis*). This drainage canal flows into the Sacramento River just north of the City of Sacramento. The majority of drain water samples collected during April and May 1990 were acutely toxic to striped bass larvae (96 h exposures), the third consecutive year that the Colusa Basin rice irrigation drain water has been acutely toxic (Bailey *et al.* 1991). While water toxicity has been documented as negatively impacting striped bass larvae, studies have not been conducted to determine the effects of water toxicity on delta smelt. However, delta smelt may be similarly affected by agricultural and industrial chemical run-off.

Some heavy metal contaminants have been released into the Delta from industrial and mining enterprises. While the effects of these contaminating compounds on delta smelt larvae and their microzooplankton food resources are not well known, the compounds could potentially adversely affect delta smelt survival.

In recent years, untreated discharges of ship ballast water introduced nonindigenous aquatic species to the Sacramento-San Joaquin estuary ecosystem (Carlton *et al.* 1990). Several introduced species may adversely affect the delta smelt. An Asian clam (*Potamocorbula amurensis*), introduced as veliger larvae at the beginning of the present drought, was first discovered in Suisun Bay during October 1986. By June 1987, the Asian clam was nearly everywhere in Suisun, San Pablo, and San Francisco Bays irrespective of salinity, water depth, and sediment type at densities greater than 10,000 individuals per square meter. Asian clam densities declined to 4,000 individuals per square meter as the population aged during the year (Carlton *et al.* 1990). Persistently low river outflow and concomitant elevated salinity levels may have contributed to this species population explosion (Carlton *et al.* 1990). The Asian clam could potentially play an important role in affecting the phytoplankton dynamics in the estuary. It may have an effect on higher trophic levels by decreasing phytoplankton biomass and by directly consuming *Eurytemora affinis* copepod nauplii, the primary food of delta smelt.

Three non-native species of euryhaline copepods (*Sinocalanus doerrii, Pseudodiaptomus forbesi,* and *Pseudodiaptomus marinus*) established themselves in the Delta between 1978–1987 (Carlton *et al.* 1990) while *Eurytemora affinis* populations, the native euryhaline copepod, have declined since 1980. It is not known if the introduced species have displaced *E. affinis* or whether changes in the estuarine ecosystem now favor *S. doerrii* and the two *Pseudodiaptomus* species (Moyle *et al.* 1989). These introduced copepod species are more efficient at avoiding the predation of larval delta smelt. The introduced copepods also exhibit a different swimming behavior that makes them less attractive to a feeding delta smelt larvae. Because of reduced food availability or feeding efficiency causing decreased food ingestion rates, the weakened delta smelt larvae is more vulnerable to starvation or predation.

The significantly altered microzooplankton food web now present in the Suisun Bay-Delta estuary may have decreased the gross growth efficiency of delta smelt larvae. Gross growth efficiency is the proportion of weight-specific food ingestion rate that goes to larval fish body growth. When food ingestion rates are low, gross growth efficiency is low. At low gross growth efficiencies, larval fish take much longer to metamorphose to juveniles. Long larval stage durations increase the likelihood that density-dependent mechanisms (e.g., predators, over-grazing of food resources, etc.) and density-independent mechanisms (e.g., adverse salinities, temperature, absence of zooplankton, water diversion entrainment and impingement mortality, etc.) would develop to adversely affect survival and recruitment. In temperate latitudes, where spawning is temporally and spatially confined, as it is for the delta smelt, both mortality and growth rates tend to be low. Ingestion in temperate species is relatively low compared to tropical species, and larval stage duration is long and potentially highly variable. Under these circumstances small changes in either mortality rates or growth rates can have significant adverse effects on recruitment potential (Shepherd and Cushing 1980, Houde 1989). Under these conditions the timing of spawning and the availability of favorable spawning sites for adults are critical to the recruitment success of the spawned cohort.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. The Service acknowledges that the available data on the population dynamics of the delta smelt were collected incidental to other investigations and were not intended to provide a population estimate. The Service believes however, that these data represent the best available information and support a finding that listing is warranted. The available data do indicate a significant population decline over the last 20 years. Though the current population has remained relatively stable over the last 5 years, it has done so at low levels. No apparent recovery is occurring. The delta smelt faces threats from a more frequent upstream shift of its aquatic estuarine habitat, and a reduction of available habitat due to drought, water exports and diversions. The shift in location of the mixing zone, as well as the reduced area available to the smelt, is expected to continue in the future. These factors will continue to adversely affect all life stages of the delta smelt. Because the smelt population is at such low levels, this species' 1-year lifespan is also a factor which threatens the species. The failure of a single reproductive season could significantly affect the ability of this species to survive and recover. Based on the evaluation of all available information on population dynamics and threats to this species, the preferred action is to propose the listing of the delta smelt as a threatened species.

Critical Habitat

Critical habitat for a threatened or endangered species is defined by section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and, (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. Because delta smelt populations since 1983 have been less than 13 percent of population levels during 1958–1983, and the population is restricted to Suisun Bay and the Delta, critical habitat is being proposed for the delta smelt to include all submerged lands below ordinary high water and the entire water column contained in Suisun Bay, the length of Montezuma Slough, portions of the Sacramento River, portions of the Delta, portions of the San Joaquin River, and the contiguous water bodies in between (a complex of bays, dead-end sloughs, channels typically less than 4 m deep, marshlands, etc.) in their entirety; specifically, the Suisun Bay through the Delta estuary at and beneath the water surface to the present benthic bathymetry in Contra Costa County, Sacramento County, San Joaquin County, and Solano County, California. Constituent elements in these areas include space for population growth, cover or shelter, maintenance of appropriate littoral zone reproduction habitat to sustain embryos and to rear larvae and juveniles, and 0–2 ppt salinities during the January to June delta smelt reproductive season. The areas being proposed for critical habitat are representative of the historic

geographical and ecological distribution of the species. They would contain the mixing zone in shallower areas less than 4 m deep where the productivity of phytoplankton and microzooplankton would be optimal, and the survival and recruitment of delta smelt larvae would be maximized. The "Proposed Regulations Promulgation" section below provides a precise metes and bounds description of the proposed critical habitat.

The Suisun Bay through Delta estuary defined by ordinary high water is known to be habitat for delta smelt and satisfies all known criteria for the physiological, behavioral, and ecological requirements of the conservation of this species. The aquatic habitat which is encompassed by this rule provides a freshwater to low salinity aquatic environment for unaffected delta smelt reproduction and rearing. This habitat also provides the hydrology and hydrodynamics necessary to provide a delta smelt nursery area and microzooplankton food for delta smelt larvae.

A weak stock-recruitment relationship strongly suggests that environmental or habitat factors may severely limit delta smelt abundance. Habitat requirements at crucial stages of the life cycle such as spawning and development of newly-hatched smelt larvae may be much more narrow than previously thought.

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Actions that could adversely affect critical habitat for this species are high diversion and export rates of surface water inflows, in combination with upstream water storage management practices and operations, that would allow the near-bottom seawater water mass to intrude upstream of Suisun Bay during late winter through early summer. Specific activities that could cause the foregoing include:

(1) Water export or substantially increased water usage for domestic, industrial, irrigation, municipal, or other purposes that would cause salinities in Suisun Bay to rise above 2 ppt between February and June; or

(2) Contaminated or untreated surface and ground water runoff, or seeps, entering the Suisun Bay and upper Delta from agricultural, industrial, mining, municipal, or similar operations.

Water exports from the Delta permitted by the California State Water Resources Control Board and implemented by the California Department of Water Resources and the U.S. Bureau of Reclamation may be affected by the designation of critical habitat. State and Federal agencies export about 6 million acre-feet per year of freshwater from the Delta Region, and private Delta water diverters remove an additional 2–3 million acre-feet per year of Delta inflow through about 1,800 unscreened diversion structures. Water exports permitted or funded by the Bureau of Reclamation which may adversely affect critical habitat, if designated as proposed, would be subject to section 7 consultation. Permits issued by the Corps of Engineers to construct or modify water diversion structures may also be subject to consultation with the Service.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all economic and other relevant impacts before making a decision on whether to issue a final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed and its critical habitat is designated, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. Federal actions which may affect the delta smelt include U.S. Army Corps of Engineers funding or issuance of permits for water pumping facilities or structures, levee construction or repairs, and channel dredging and dredge spoil disposal projects. Other examples include U.S. Bureau of Reclamation water export or water management operations or projects, and U.S. Environmental Protection Agency actions pertaining to the water quality standards of Suisun Bay, Suisun Marsh, and the Delta. Measures to protect the listed winter-run chinook salmon, for which the National Marine Fisheries Service has jurisdiction under the Act, also may affect the delta smelt and may require consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any threatened fish or wildlife species not covered by a special rule. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing threatened species permits are at 50 CFR 17.32. Unless otherwise provided by special rule, such permits are available for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, zoological exhibition, educational purposes, special purposes consistent with the Act, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species;

(3) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(4) Constituent habitat elements critical for the conservation of the delta smelt;

(5) Additional information concerning the range and distribution of this species;

(6) Further statistical data on population size and stability of this species;

(7) Current or planned activities in the subject area and their possible impacts on this species; and

(8) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Any final decision on this proposal will take into consideration all the comments and additional information received by the Service, and such communications may lead to a final decision that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, E–1803, Sacramento, California 95825–1846.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available on request from the Field Supervisor, Sacramento Field Office (See **ADDRESSES** section).

Authors

The primary authors of this proposed rule are A. Keith Taniguchi, Sacramento Field Office (see **ADDRESSES** section) (telephone 916/978–4866 or FTS 460–4866); and Robert Ruesink, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 N.E. 11th Avenue, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17— [AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		
FISHES:							
*	*	*	*	*	*		
Smelt, delta	*Hypomesus transpacificus*	U.S.A. (CA)	Entire	T		17.95(e)	NA
*	*	*	*	*	*		

3. It is further proposed to amend § 17.95(e) by adding critical habitat of the delta smelt in the same alphabetical sequence as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

* * * * *

DELTA SMELT (*Hypomesus transpacificus*)

California: Areas of all water and all submerged lands below ordinary high water and the entire water column bound by and contained in Suisun Bay (including the contiguous Grizzly and Honker Bays), the length of Montezuma Slough, portions of the Sacramento River, portions of the Delta, portions of the San Joaquin River, and the contiguous water bodies in between (a complex of bays, dead-end sloughs, channels typically less than 4 m deep, marshlands, etc.) as more particularly described below:

Beginning at the Carquinez bridge which crosses the Carquinez Strait, thence northwesterly along the north shore of Suisun Bay to Montezuma Slough; thence upstream to its confluence with the Sacramento River; thence up the Sacramento River to Walnut Grove; thence along the Delta Cross Channel to the North Fork Mokelumne River; thence downstream to its confluence with the San Joaquin River; thence upstream to the confluence of Middle River; thence southerly to the South Bacon Island Canal; thence due west to Old River; thence northwesterly to Rock Slough; thence westerly to Sand Mound Slough; thence northerly to Dutch Slough; thence westerly to Big Break and its confluence with the San Joaquin River; thence downstream to its confluence with Suisun Bay; thence westerly along the south shore of Suisun Bay to the Carquinez Bridge.

Constituent elements of the area proposed as critical habitat include space for population growth, cover or

shelter, estuarine water with a salinity of 0–2 ppt in Suisun Bay during January to June for reproduction, and a salinity of 0–10 ppt for maintenance of the required zooplankton for food, and maintenance of a littoral zone for sustaining embryos, larvae and juveniles. The seasonal water quality is affected by natural phenomena such as floods, droughts and tidal currents (or other events) and human actions. The interaction of these variable influences continually or seasonally shift the geographic location of the mixing zone throughout the area of critical habitat designated above. The critical habitat would contain the mixing zone in shallow water areas typically less than 4 m deep where the productivity of phytoplankton and zooplankton would be optimal and delta smelt survival maximized.

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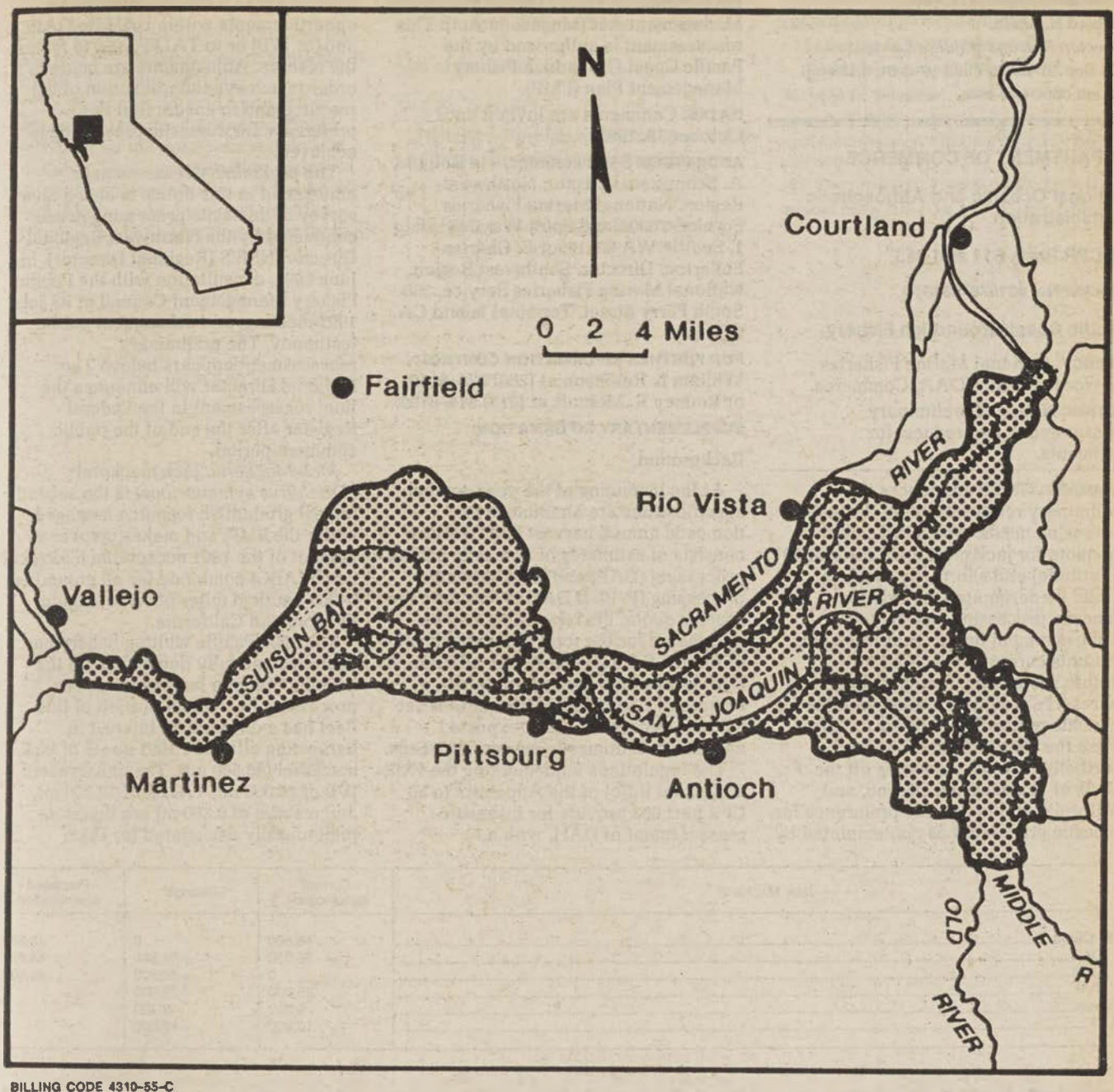

BILLING CODE 4310-55-C

Dated: September 27, 1991.
Richard N. Smith,
Director, Fish and Wildlife Service.
[FR Doc. 91-23776 Filed 10-2-91; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 901078-0345]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary reassessment, and request for comments.

SUMMARY: NMFS announces the preliminary reassessment of domestic processing needs, which indicate that the quota for jack mackerel (north of 39° N. latitude) and shortbelly rockfish should be designated entirely for domestic processing, and requests public comment on this reassessment. Amounts currently specified for joint venture processing, foreign fishing, and the reserve would be made available for domestic processing in order to fully utilize the 1991 jack mackerel and shortbelly rockfish resources off the coasts of Washington, Oregon, and California, and to provide preference for domestic processors as contemplated by the Magnuson Fishery Conservation and Management Act (Magnuson Act). This reassessment is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP).

DATES: Comments are invited until October 15, 1991.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Bldg 1, Seattle WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney R. McInnis at (213) 514-6199.

SUPPLEMENTARY INFORMATION:

Background

At the beginning of the year, annual specifications are announced for domestic annual harvest (DAH) which consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP). If DAH is less than the species quota, the remainder may be designated for the total allowable level of foreign fishing (TALFF). In addition, if DAP is less than the species quota, a reserve of 20 percent of the quota is set aside to accommodate unexpected expansion of domestic processing needs.

The regulations implementing the FMP at Section II.I(c) of the Appendix to 50 CFR part 663 provide for inseason reassessment of DAH, with a mechanism to make adjustments to apportionments within DAH (to DAP and/or JVP) or to TALFF, and to release the reserve. Adjustments are made in order to achieve full utilization of the resource and to ensure that the preference for domestic processing is achieved.

The preliminary reassessment announced in this notice is based on a survey of domestic processing needs conducted by the Northwest Regional Director, NMFS (Regional Director), in June 1991, consultation with the Pacific Fishery Management Council at its July 1991 meeting, and subsequent public testimony. The preliminary reassessment appears below. The Regional Director will announce the final reassessment in the **Federal Register** after the end of the public comment period.

Jack Mackerel: Jack mackerel (*Trachurus symmetricus*) is the second largest groundfish resource managed under the FMP, and makes up over 10 percent of the 1991 acceptable biological catch (ABC) combined for all groundfish 0-200 nautical miles off Washington, Oregon, and California.

The 1991 Pacific whiting fishery has been become fully domestic with the introduction of a large-scale at-sea processing fleet and a portion of this fleet has expressed an interest in harvesting all of the 1991 quota of jack mackerel (46,500 mt). The unharvested JVP of 25,000 mt, TALFF of 12,200 mt, and reserve of 9,300 mt are therefore preliminarily designated for DAP.

Jack Mackerel	Current specification	Change	Proposed specification
1991 Quota	46,500	0	46,500
DAH	25,000	+21,500	46,500
DAP	0	+46,500	46,500
JVP	25,000	−25,000	0
Reserve	9,300	−9,300	0
TALFF	12,200	−12,200	0

Shortbelly Rockfish: Shortbelly rockfish (*Sebastes Jordani*) is the most abundant rockfish off California, but has not been the major target of a commercial fishery. Targeting on shortbelly rockfish occurred only in 1982 in an extremely small experimental joint venture fishery using specialized gear.

As in the jack mackerel fishery, a portion of the at-sea processor fleet has expressed an interest in harvesting all of the 1991 harvest guideline of shortbelly rockfish (13,000 mt). Consequently, the JVP of 10,400 mt and reserve of 2,600 mt are designated entirely for DAP.

Shortbelly Rockfish	Current specification	Change	Proposed specification
1991 Quota	13,000	0	13,000
DAH	10,400	+2,600	13,000
DAP	0	+13,000	13,000
JVP	10,400	−10,400	0
Reserve	2,600	−2,600	0
TALFF	0	0	0

Classification

This action is promulgated under the FMP and its implementing regulations at 50 CFR 611.70 and part 663.

The determinations to reapportion jack mackerel and shortbelly rockfish are based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Fisheries, Fishing, Administrative practice and procedure, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 27, 1991.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-23792 Filed 9-30-91; 12:14 p.m.]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 192
Thursday, October 3, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Intent to Grant an Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Patent Application Serial No. 07/637,867, "1,24 Dihydroxy Vitamin D_2," filed January 8, 1991, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive patent license to LUNAR Corporation, 313 West Beltline Highway, Madison, Wisconsin, 53713.

DATES: Comments must be received on or before January 1, 1992.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone 301/344–2786, (FTS) 344–2786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as LULNAR Corporation has submitted a complete and sufficient application for a license and LULNAR Corporation may be a co-owner of the invention or a division thereof. The prospective exclusive patent license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive patent license may be granted unless, within ninety days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

William H. Tallent,

Assistant Administrator.

[FR Doc. 91–23767 Filed 10–2–91; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Running Springs Water District; Snow Valley Water Project; San Bernardino National Forest; San Bernardino County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare a joint Environmental Impact Statement (EIS) Environmental Impact Report (EIR) in conjunction with the Running Springs Water District (RSWD) which has proposed to upgrade its treatment plant and to implement reuse of its treated effluent for snowmaking and irrigation at the Snow Valley Ski Resort. RSWD will serve as the lead CEQA Agency while the Forest Service will serve as the lead Federal agency in meeting the requirements of the National Environmental Policy Act (NEPA).

Issues Identified: Environmental issues identified include: Public health implications of effluent reuse, water transfers, water quality, groundwater recharge, biological resources, threatened and endangered species, cultural resources, erosion, land use and noise.

Seven alternatives have been identified: (1) No action, including no water deliveries from offsite would be made to the Snow Valley Ski Resort, (2) no action, however, Snow Valley would truck in supplemental water purchased from nearby well owners, (3) proposed treatment plant upgrades would be constructed, however, no effluent delivery pipeline would be constructed and treated effluent would be trucked to Snow Valley, (4) tertiary-treated effluent would be used for local park and landscape irrigation, (5) tertiary-treated effluent would be used for groundwater recharge and recovery, (6) tertiary-treated effluent would be used for enhancement of stream flows, and (7) tertiary-treated effluent would be transported to Snow Valley Ski Resort via an eight mile long pipeline to the existing reservoir. The treated effluent would be held in the reservoir until it could be used for irrigation or snow making. There is currently a prohibition against discharging effluent to Deep Creek, the drainage in which Snow Valley is located.

The Draft EIS (DEIS) is expected to be available for public review by January 1992 and comments will be received for a period of 45 days following the date that the notice of its availability is published in the **Federal Register.** It is important that those interested in the management of the San Bernardino National Forest participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the document or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations For Implementing The Procedural Provisions of The National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal Court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, (*Vermont Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978),* and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, (*Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1338 (E.D. Wisc. 1980).* The reason for this is to ensure that substantive comments and objections are made available to the Forest Service when they can meaningfully consider them and respond to them in the final document. All comments will be considered and analyzed in preparing the final EIS, which is scheduled to be completed by May 1992. The responsible official will document the decision in a Record of Decision which will be subject to appeal under the provision of 36 CFR 217.

DATES: Comments are requested on this notice concerning the scope of analysis of the draft EIS. Comments must be received on or before November 4, 1991.

PUBLIC MEETING: The Forest Service will conduct a public meeting to provide information on the project to the public

on October 5, 1991 at 10 a.m. at the Snow Valley Ski Resort located 5 miles east of Running Springs on State Highway 18.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis for the Running Springs Water District, Snow Valley Water Project proposal to Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and preparation of the EIS/EIR to Tracy Kremer, Lands Forester at the Arrowhead Ranger District, P.O. Box 7, Rim Forest, CA 92378 or call (714) 337–2444.

Dated: September 24, 1991.

Gene Zimmerman,

Forest Supervisor.

[FR Doc. 91–23796 Filed 10–2–91; 8:45 am]

BILLING CODE 3410–11–M

ARMS CONTROL AND DISARMAMENT AGENCY

Announcement of the William C. Foster Fellows Visiting Scholars Program for the 1992–93 School Year

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition for selection of visiting scholars to participate in ACDA's activities during the 1992–93 academic year.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568) provides that "A program for visiting scholars in the field of arms control and disarmament shall be established by the Director of the U.S. Arms Control and Disarmament Agency in order to obtain the services of scholars from the faculties of recognized institutions for higher learning."

The law states "That the purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer * * * Fellows shall be chosen by a board consisting of the Director of the Agency, who shall be the chairperson, and all former Directors of the Agency." In honor of the first Director of ACDA, William C. Foster, who served from the inception of ACDA in 1961 to 1969, scholars are known as William C. Foster Fellows.

ACDA began this program by competitively selecting six visiting scholars for the 1984–85 academic year. The competition has continued each subsequent academic year until the present. One-year assignments will begin at a mutually agreeable time between July 1992 and September 1993.

Positions are available in the Bureau of Strategic Nuclear Affairs (SNA), the Bureau of Multilateral Affairs (MA), the Bureau of Verification and Implementation (VI), the Bureau of Nonproliferation Policy (NP), the Office of the Chief Science Advisor (CSA), and the Policy Planning Group (PPG). The attached "Description of Visiting Scholar Assignments to ACDA" describes the positions in detail. Evaluation of applicants for appointments to these positions will focus upon scholars' potential for providing expertise or performing services needed by ACDA, rather than on the scholars's previously displayed interest in arms control. While pursuit of the scholars' own line of research may sometimes be possible, support of such activity is not the purpose of the program.

Visiting scholars will be detailed to ACDA by their universities; the universities will be compensated for the scholars' salaries and benefits in accordance with the Intergovernmental Personnel Act and within Agency limitations. In addition to their salary, the visiting scholars will receive reimbursement for travel to and from the Washington, D.C. area for their one-year assignment and either a per diem allowance during the one-year assignment or relocation costs.

Visiting scholars must be citizens of the United States and on the faculty of a recognized institution of higher learning, having served as a permanent career employee of the institution for at least 90 days prior to selection for the program. Prior to appointment they will be subject to a full-field background security investigation for a Top Secret security clearance, as required by section 45 of the Arms Control and Disarmament Act. Visiting scholars will also be subject to applicable Federal conflict of interest laws and standards of conduct.

Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap that does not interfere with performance of duties. Applications should be in the form of a letter indicating the position(s) in which the applicant is interested and the perspective and expertise the applicant offers. The letter should be accompanied by a curriculum vitae and any other materials, such as letters of reference and samples of published articles (no more than three) that the applicant believes should be considered in the selection process. Please submit twelve copies of each article submitted.

Applications, and any requests for additional information, should be sent to: Visiting Scholars Program, Attention: Operations Analysis, room 5726, U.S. Arms Control and Disarmament Agency, Washington, DC 20451. The application deadline for assignments for the 1992–1993 academic year is January 31, 1992, subject to extension at ACDA's option. Announcement of selection, subject to security clearance procedures, is expected in spring 1992.

Dated: September 20, 1991.

Alfred Lieberman,

Chief, Operations Analysis.

Description of Visiting Scholar Assignments to ACDA

Bureau of Strategic and Nuclear Affairs

Description of Bureau

The Bureau of Strategic Nuclear Affairs (SNA) has responsibility for support of the Director of ACDA on arms control matters concerning limitations on U.S. and Soviet strategic and theater offensive forces and defensive and space forces. This includes providing technical and policy guidance in these areas and participating in the policy deliberation of Interagency Groups responsible for these areas. SNA also has responsibility for ACDA's participation in the Nuclear and Space Talks (NST) in Geneva other bilateral US-USSR nuclear arms control negotiations, and other defense related matters including ACDA participation in US decisions regarding research on ballistic missile defenses. Other bilateral discussions include meetings of the Standing Consultative Commission (SCC) and preparation for periodic Anti-Ballistic Missile (ABM) Treaty reviews as well as meetings of the Special Verification Commission (SVC) on implementation of and compliance with the Intermediate-Range Nuclear Forces Treaty (INF). SNA also has interagency responsibility for backstopping of the NST negotiations, the SVC, the SCC, and ABM Treaty reviews. SNA has three divisions: Strategic Affairs, Theater Affairs, and Defense and Space.

Possible Assignments

A visiting scholar assigned to SNA would participate in the policy making process in one or more of the areas cited above. The visiting scholar's responsibilities would include drafting

position papers, background studies, and policy analyses both for use within ACDA and for coordination with other agencies such as the Central Intelligence Agency, the Office of the Secretary of Defense, the Joint Chiefs of Staff, and the Department of State. In addition, the scholar might represent ACDA on interagency working groups. The visiting scholar would be called upon to exercise a relatively high degree of individual judgment in developing policy recommendations. There may be an opportunity for service on the staff of a U.S. delegation to an arms control negotiation. The most likely area of concentration for the visiting scholar would be strategic arms reduction policy, but this could vary according to the scholar's background and the needs of SNA.

Qualifications

Because of the highly technical content in these areas, SNA seeks a physical scientist with a broad theoretical or applied background. Useful background for a candidate would include: knowledge of basic physics, facility in concise writing, general communication skills, and proven ability to innovate. Background in areas of SNA responsibility would be of value but is not a requirement.

Bureau of Multilateral Affairs

Description of Bureau

The Bureau of Multilateral Affairs (MA) has primary responsibility within ACDA for arms control issues dealt with in multilateral forums. On these issues the Bureau is responsible for the development of policy, strategy, and tactics. The Bureau is responsible for consultation and coordination with foreign governments and preparing the Director and Deputy Director for their meetings with foreign country representatives on multilateral arms control. It also provides organizational support, delegational staffing, and Washington backstopping for multilateral arms control negotiations.

In the accomplishment of this mission, MA performs the following tasks:

- Leads the preparation of guidance within ACDA for the negotiations on Conventional Forces in Europe and on Confidence-and-Security-Building Measures,
- Leads the preparation of guidance for, and backstopping of, delegations to the Conference on Disarmament (CD), multilateral and bilateral chemical weapons negotiations, the United Nations Disarmament Commission, and the First Committee of the United Nations General Assembly,
- Provides general support to the US Representative to the CD who heads these delegations,
- Develops policy within ACDA for the President's Open Skies initiative.

MA has three divisions: European Security Negotiations (ESN), International Security Affairs (ISA), and Science and Technology Policy (STP).

Possible Assignments

A visiting scholar might be assigned to assist in the negotiations leading to a Chemical Weapons treaty or a follow-on treaty to the Conventional Armed Forces in Europe treaty.

Qualifications

Useful background for a candidate would include knowledge of European political and military issues and familiarity with NATO defense doctrine. Previous experience and research on arms control and national security issues would be valuable.

Bureau of Verification and Implementation

Description of Bureau

VI provides verification support for all arms control negotiations including those on strategic and theater nuclear arms limitations, limitations on conventional forces in Europe, limitations on the tests of nuclear weapons, limitations on the deployment of strategic defenses in space, and limitations on the production and stockpiling of chemical and biological weapons.

VI participates in compliance assessment with regard to the Intermediate-Range Nuclear Forces Treaty (INF), the Threshold Test Ban Treaty (TTBT), the Antiballistic Missile Treaty (ABM), the Biological Weapons Convention (BWC), the Geneva Protocol on Chemical Weapons, and the Limited Test Ban Treaty. VI also provides technical support on compliance to the Standing Consultive Commission, a U.S./Soviet forum for discussing suspected treaty violations.

Possible Assignments

VI develops verification requirements for arms control agreements being negotiated; reviews compliance with existing arms control agreements; and evaluates the potential of various collection technologies for monitoring compliance with provisions of arms control agreements. A visiting scholar would be expected to participate in one or more of these activities by performing studies or drafting policy papers. In some cases, the visiting scholar would represent ACDA on interagency working groups and would be called upon to exercise a relatively high degree of individual judgement.

Subject areas to which a visiting scholar might contribute include: Verification of a treaty on chemical weapons; verification of limits on space-based weapons and weapons that can attack space-based military assets; compliance with treaty limitations on ballistic missiles and nuclear testing; or analysis of Soviet views on stability and their impact on verification.

Qualifications

Because of the complex technical and analytical content in these area, VI seeks a physical scientist, or expert in Soviet strategy and doctrine with a broad background. Specific useful background for a candidate would include: Knowledge of basic physics, chemistry, aerospace systems, or Soviet strategic studies. The visiting scholar should have facility in analytical writing and general communication and a proven ability to innovate. Specific background in the areas of VI responsibility would be of value, but is not a requirement.

Bureau of Nonproliferation Policy

Description of Bureau

The Bureau of Nonproliferation Policy (NP) has responsibility for curbing the proliferation of nuclear and chemical weapons, missiles, and conventional armaments. Functions include review of exports and support of the international safeguards system, the Nuclear Non-Proliferation Treaty and the Treaty of Tlateloco. NP also assesses the implications of proposed arms transfers and technology transfers, prepares arms control impact statements on U.S. defense programs and prepares arms control policy assessments. The Bureau participates in missile and chemical weapon nonproliferation policy development and supports associated multilateral arrangements such as the Missile Technology Control Regime and the Australia Group. In addition, NP is responsible for ACDA's economic analysis work and coordinates publication of World Military Expenditures and Arms Transfers.

Possible Assignments

A visiting scholar assigned to NP would work on selected topics within the Bureau's responsibility, such as the interrelationships among U.S. policies on nuclear proliferation, exports of conventional arms, and transfers of missile technology. The visiting scholar's responsibilities would include the preparation of analyses of such

issues and recommendations for new arms control initiatives.

The position would involve coordination with officials in the Department of State and Defense and other concerned agencies. In carrying out assigned duties, the individual would need to exercise initiative and function effectively with minimum direct guidance and supervision.

Qualifications

Desirable attributes for a candidate from the physical sciences would include expertise in nuclear, chemical or military technologies, industrial development, or science policy. Candidates from other disciplines relevant to NP's activities ideally should have some understanding of the role of arms control in national security planning, familiarity with weapons characteristics and capabilities, or knowledge of political-military conditions in developing regions. Because of the complex political, technology and military issues involved, some background in national security studies or international relations would also be desirable.

Office of the Chief Science Advisor

Description of Office

The Office of the Chief Science Advisor (CSA) provides a focal point for ACDA and for the US Government on science and technology in arms control and on coordination of verification research and development. Its responsibilities include:

- Provision of operations analysis, mathematical and statistical support for evaluation of the implications of treaty options and for negotiation of treaty verification protocols,
- Coordination of interagency and international verification research and development efforts,
- Liaison with academe, industry, and other government agencies on the application of science to arms control problems,
- Provision of technical computer support to the Agency,
- Coordination of arms control related external research throughout the government and oversight of the Agency's external research program,
- Provision of technical management of projects of a general nature.

Possible Assignments

A visiting scholar in CSA might be assigned to a liaison post between ACDA and academe or industry; to a post in the Research Group contributing to the performance and management of research; or to the Operations Analysis Group applying operations research methods and other mathematical and statistical techniques to the evaluation of conventional and strategic treaty options or to the comparison of verification protocols. Work in the Operations Analysis Group could involve the use of many computer applications including large strategic or conventional war-gaming models.

Qualifications

The assignments in CSA require the backgrounds of physicists, engineers, mathematicians, mathematical statisticians, or operations research analysts. There is no requirement that the scholar have had experience with arms control problems. While the emphasis at ACDA is on the application of these disciplines, scholars whose specialties are mainly theoretical can make valuable contributions to the work of CSA.

Policy Planning Group

Description of Group

The Policy Planning Group (PPG) is attached to the Office of the Director of the Agency and provides the Director and other Agency principals with time-sensitive as well as long-range analyses on arms control issues. The mission of PPG encompasses the full range of arms control issues involving ACDA and its charter is to produce independent, expert advice that cuts across Agency organizational lines.

Possible Assignments

A visiting scholar could write a long-term policy paper or thesis of choice with a view toward informing future U.S. arms control policy. A visiting scholar might also be asked to provide advisory assistance to the Director's office on the preparation and analysis of arms control initiatives within the U.S. Government. A visiting scholar could also serve on the Agency's internal task forces, such as treaty ratification or resources review and assist in other Agency areas, such as public affairs.

Qualifications

A candidate should have a broad background in national security issues, international relations and arms control. A candidate should also be familiar with issues in U.S.-Soviet relations and multilateral arms control. Specialized knowledge in any of the following areas would be useful: Conventional and/or nuclear forces; strategic, chemical and biological weapons; proliferation; verification; and treaty implementation.

[FR Doc. 91-23795 Filed 10-2-91; 8:45 am]
BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), The CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and CAC on Population Statistics. The joint meeting will convene on October 31-November 1, 1991 at the Old Colony Inn, 625 First Street, Alexandria, Virginia 22313.

The CAC of the AEA is composed of nine members appointed by the president of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Census Bureau's programs;and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the chairman of the board of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the president of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts; considers priority issues in the planning of censuses and surveys; examines guiding principles; advises on questions of policy and procedures; and responds to Census Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members appointed by the president of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the October 31 combined meeting that will begin at 8:30 a.m. and end at 10:35 a.m. is: (1)

Introductory remarks by the Director, Bureau of the Census; (2) The adjustment decision; (3) 1990 census update; (4) economic and agriculture censuses update; (5) new developments in national accounts; and (6) Census quality management.

The agendas for the four committees in their separate and jointly held meetings that will begin at 10:45 a.m. and adjourn at 5:45 p.m. on October 31 are as follows:

The CAC of the AEA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the AEA, (2) issues in statistical practice (joint with the CAC on Population Statistics), (3) year 2000 focus group, (4) M3 Survey (joint with the CAC of the ASA), and (5) Current Population Survey modernization.

The CAC of the AMA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the AMA, (2) computer-assisted survey information collection (joint with the CAC of the ASA), (3) year 2000 focus group, (4) effect of computer-assisted telephone interviewing on demographic estimates (joint with the CAC on Population Statistics, and (5) planning for commodity flows survey.

The CAC of the AMA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the ASA, (2) computer-assisted survey information collection (joint with the CAC of the AMA), (3) year 2000 focus group, (4) M3 Survey (joint with the CAC of the AEA), and (5) special population censuses and decennial testing (joint with the CAC on Population Statistics).

The CAC on Population Statistics: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of Population Statistics, (2) issues in statistical practice (joint with the CAC of the AEA), (3) year 2000 focus group, (4) effect of computer-assisted telephone interveiewing on demographic estimates (joint with the CAC of the AMA), and (5) special population censuses and decennial testing (joint with the CAC of the ASA).

The agendas for the November 1 meeting that will begin at 8:45 a.m. and adjourn at 1 p.m. are:

The CAC of the AEA: (1) Matching data with the Bureau of Economic Analysis and the Bureau of Labor Statistics: An update (joint with the CAC of the AMA), (2) annual report from the Center for Economic Studies, (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC of the AMA: (1) Matching data with the Bureau of Economic Analysis and the Bureau of Labor Statistics: An update (joint with the CAC of the AEA), (2) design and plans for integrated post-secondary education data systems, (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC of the ASA: (1) 1990 census data products (joint with the CAC on Population Statistics), (2) evaluations of the 1990 census (joint with the CAC on Population Statistics), (3) development and discussion of recommendations, and (4) closing session including (a) continued commitee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC on Population Statistics: (1) 1990 census data products (joint with the CAC of the ASA), (2) evaluations of the 1990 census (joint with the CAC of the ASA), (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

All meetings are open to the public, and a brief period is set aside on November 1 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least 3 days before the meeting.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, room 2423, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone: (301) 763–5410.

Dated: September 27, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91–23755 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket No. 56–91]

Proposed Foreign-Trade Zone—Waterville, ME; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Maine International Foreign-Trade Zone, Inc. (a Maine non-profit corporation), requesting authority to establish a general-purpose foreign-trade zone in Waterville, Maine, adjacent to the Belfast Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 20, 1991. The applicant is authorized to make the proposal under title 5, section 13062 of the Maine Revised Statutes Annotated.

The proposed general-purpose zone (62 acres) would be located on a phased-development industrial/commercial site at the southern end of the Waterville Airport, between U.S. Interstate 95 and Airport Road. Union/Front Corporation, which owns the property, will develop the site and operate the zone.

The application contains evidence of the need for zone services in the Waterville area. Several firms have indicated an interest in using zone procedures for warehouseing/distribution of such items as stoves and related products, shoes, lumber and plastic products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committe has been appointed to investigate the application and report to the Board. The committee consists of John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Victor G. Weeren, Assistant Regional Commissioner of Customs, U.S. Customs Service, Northeast Region, suite 801, 10 Causeway Street, Boston, MA 02222–1056; and, Colonel Philip R. Harris, Division Engineer, U.S. Army Engineer Division, New England, 424 Trapelo Road, Waltham, MA 02254–9149.

As part of its investigation the examiners committee will hold a public hearing on October 29, 1991, at 9 a.m., at the City Council Chambers, City Hall, Castonguay Square, 1 Common Street, Waterville, Maine 04901–6699.

Interested parties are invited to present their views at the hearing.

Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by October 22, 1991. Instead of an oral presentation written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through November 29, 1991.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the President, Mid-Maine Chamber of Commerce, One Post Office Square, Waterville, Maine 04901–0142

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: September 30, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–23851 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 55–91]

Foreign-Trade Zone 43—Battle Creek, MI, Application for Subzone; Mead Johnson Infant Formula/Nutritional Products Plant, Zeeland, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Battle Creek, grantee of FTZ 43, requesting special-purpose subzone status for the infant formula and nutritional products manufacturing facilities of Mead Johnson & Company (MJC) (subsidiary of Bristol-Myers Squibb), located in Zeeland (southern Ottawa County), Michigan. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 24, 1991.

The MJC facilities consist of a main manufacturing plant and two warehouses in Zeeland, approximately 30 miles southwest of Kent County International Airport in Grand Rapids, Michigan. The manufacturing plant (110,000 sq. ft. on 29 acres) is located at 725 East Main Street in Zeeland, and the application also covers a planned expansion of this site to include a 125,000 sq. ft.-production facility. The remaining two sites are individual warehouses located at 601 East Rocsevelt Avenue and 220 East Riley Street in Zeeland.

The MJC plant is used to produce infant formula, adult nutritional formula and other nutritional products for export and the domestic market. While many of the products are milk-based, certain products involve non-dairy, soy-based formulas. Foreign ingredients include: Powdered milk, casein, whey protein concentrate, animal by-products, grain by-products, chemicals (phosphates, hydroxides, sulfates, chlorates, vitamins), coloring matter, and various vegetable fats, oils and margarine (duty rate range: free—22.5%). The applicant indicates that foreign milk products will be used only in production for export. Products destined for the U.S. market would certain only domestic dairy products.

Zone products would allow MJC to use world-priced, ex-quota foreign-milk products in its exports, and would also exempt it from Customs duty payments on the foreign materials used in its export production. On its domestic sales, the company would be able to choose duty rates that apply to finished formula and nutritionals (HTS Headings 1901, 2104, 2106, 3004; duty rates: free—16.2%, 15.4 cents/Kg.). The applicant indicates that subzone status would help improve MJC's international competitiveness and be a major factor in the expansion of its Zeeland plant instead one of the company's offshore facilities.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William L. Morandini, District Director, U.S. Customs Service, North Central Region, McNamara Federal Building, suite 200, 477 Michigan Avenue, Detroit, Michigan 48226; and, Colonel Richard Kanda, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231–1027, Office: McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 29, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, McNamara Federal Building, suite 1140, 477 Michigan Avenue, Detroit, Michigan 48226.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue, NW., Washington, DC 20230

Dated: September 27, 1991.

John T. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–23852 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–032]

Large Power Transformers From Japan; Amendment to Final Results of Antidumpting Finding Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping finding administration review.

SUMMARY: On June 26, 1991, the Department of Commerce published the final results of its administrative review of the antidumpting finding on large power transformers from Japan. The review covered three manufacturers/exporters of this merchandise, Fuji Electric Corporation (Fuji), Toshiba Corporation, and Hitachi Electric Corporation, and various periods from September 1, 1975, through May 31, 1987. Based on the correction of two clerical errors, we have changed the margin for Fuji for the period September 1, 1975, through May 31, 1985, from 4.22 percent to 3.40 percent.

EFFECTIVE DATE: October 3, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Paul McGarr, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 1991, the Department of Commerce published in the **Federal Register** (56 FR 29215) the final results of its administrative review of the antidumpting finding (37 FR 11773, June 14, 1972) of large power transformers from Japan. After publication of our final results, the petitioner and one respondent alleged that the Department had made clerical errors when calculating the margin for one U.S. sale. The petitioner alleged that a clerical

error had been made regarding the adjustment for supervision expenses, while the respondent alleged that a clerical error had been made regarding the adjustment for inland insurance expenses. We agree and have corrected both errors.

Amended Final Results of Review

As a result of our correction of the clerical errors, we have determined tha a weighted-average margin of 3.40 percent exists for Fuji for the period September 1, 1975, through May 31, 1985.

The Department will instruct the Customs Service to assess anti dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Since the cash deposit rate of estimated antidumping duties is set by the weighted-average margin calculated for the last review period in which Fuji made shipments, the cash deposit rate of zero percent, calculated for the June 1, 1986, through May 31, 1987 period, remains unchanged.

For any future entries of this merchandise from a new exporter not covered in this or any previous reviews, and who is unrelated to any reviewed firm, a cash deposit of zero percent shall be required. These deposit requirements are effective for all shipments of the covered merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This notice is published pursuant to 19 CFR 353.28.

Dated: September 26, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-23847 Filed 10-2-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-506]

Oil Country Tubular Goods From Canada; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On July 19, 1991, the Department of Commerce initiated administrative reviews of the antidumping duty order on oil country tubular goods from Canada (56 FR 33521). The Department has now determined to terminate these reviews.

EFFECTIVE DATE: October 3, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph B. Kaesshaefer, Jr. or Robin Gray, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 1991, in response to a request received from petitioners and a respondent in this case, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on oil country tubular goods from Canada (56 FR 33521). This notice stated that we would review entries from Prudential Steel Ltd., Christianson Pipe Ltd., and IPSCO, Inc. during the period May 31, 1990 through May 31, 1991.

Petitioners withdrew their request for review on September 17, 1991 of Prudential Steel Ltd. and Christianson Pipe Ltd., and IPSCO, Inc. withdrew its request for review on September 13, 1991. Because all requests for withdrawal were timely received under § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)(1991)), the Department has determined to terminate these reviews.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.22(a)(5) of the Department's regulations.

Dated: September 26, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-23845 Filed 10-2-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and determination not to revoke in part.

SUMMARY: On May 21, 1991, the Department of Commerce published the preliminary results of its administrative review and intent to revoke in part on roller chain, other than bicycle, from Japan, for the manufacturers Daido Kogyo Co., Ltd., and Enuma Chain Manufacturing Co., Ltd. The review covered the period April 1, 1986, through March 31, 1987. We published a tentative determination to revoke the order with respect to these two companies on August 11, 1988.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke in part. Based on our analysis of the comments received, we have changed the final results from those presented in the preliminary results of review for one manufacturer. Further, we have determined not to revoke the antidumping duty finding with respect to these companies at this time.

EFFECTIVE DATE: October 3, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 23277) the preliminary results of its administrative review and intent to revoke in part on roller chain, other than bicycle, from Japan, with respect to the manufacturers Daido Kogyo Co., Ltd., and Enuma Chain Manufacturing Co., Ltd. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of roller chain from Japan. The term "roller chain, other than bicycle" as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. The review further covers chain model numbers 25 and 35. Roller chain, other than bicycle, was classified under item numbers 652.1400 through 652.3800 of the Tariff Schedule of the United States Annotated (TSUSA) during the period of review. It is currently classifiable under various Harmonized Tariff Schedule (HTS) item numbers from 7315.11.00 through 7616.90.00. These TSUSA and HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters, Daido Kogyo Co., Ltd., (Daido Kogyo), and Enuma Chain Manufacturing Co., Ltd. (Enuma), and the period April 1, 1986, through March 31, 1987.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke in part. At the request of the American Chain Association (ACA), Daido Kogyo, Enuma, and Daido Corporation, we held a public hearing on July 16, 1991. We received comments and rebuttal comments from the ACA, Daido Kogyo, and Enuma.

Comment 1: The ACA argues that before the Department can revoke the order with respect to Daido Kogyo and Enuma, the Department is required by its regulations and by recent case law to update its information through the date of publication of the tentative determination to revoke. The relevant regulation, 19 CFR 353.54(a)(1988), implies that a revocation will be based on relatively current information. The ACA argues further that in *Freeport Minerals Co.* v. *United States* ("*Freeport*"), 776 F.2d 1029 (Fed. Cir., 1985), the Court of Appeals for the Federal Circuit held that the Department had abused its discretion in failing to update its information through the date of the tentative determination to revoke. The ACA notes that this ruling was reaffirmed in *UST, Inc.* v. *United States,* 831 F.2d 1028 (Fed. Cir., 1987), and *Matsushita Electric Industrial Co., Ltd.* v. *United States,* 823 F.2d 505 (Fed. Cir., 1987). Thus, the ACA argues that the Department must conduct administrative reviews for all periods from April 1, 1983, through August 11, 1988.

Respondents counter that the Department is not required under either the regulations or case law to conduct administrative reviews through the date of the tentative determination to revoke. The regulations at 19 CFR 353.54(f)(1988) allow for the possibility that a date other than the date of the tentative determination could be used as the effective date of revocation. Where, as here, the respondents have met all requirements for revocation, the Department is justified in backdating the effective date of revocation, especially in light of the Department's failure to conduct this review in a timely manner, and the petitioner's failure to present any arguments that to do so is not within the Department's discretion. Moreover, such backdating comports with the basic regulatory framework under which revocation is normally granted if the results of three consecutive administrative reviews show no less than fair value sales. Respondents argue further that the cases cited by the petitioner do not demonstrate that the Department is required to conduct all reviews through the date of the tentative determination to revoke.

Department's Position: We disagree with the proposition put forward by the ACA that the Department must conduct an administrative review for every review period from the base period of no dumping through the date of the tentative determination to revoke (the "gap" period), before it can publish a final determination to revoke. In cases with a significant backlog, it has long been the Department's policy to perform an "update" review covering the most recent one-year period, in lieu of reviewing all periods in the "gap." See, e.g., Television Receivers, Monochrome and Color, from Japan, 55 FR 35916 (September 4, 1990). It was originally the Department's intention that this 1986–1987 review period would serve as the "update" review for these two companies. However, the ACA has raised a valid issue with regard to the Federal Circuit's guidance on the conduct of such reviews. In Freeport, the Federal Circuit emphasized the need to base revocation determinations on "current data," and held that revocation determinations should not be based on information more than three years old. If the Department were to base its revocation on the information presented in this review, it would be basing its revocation on information that is more than four years sold. Accordingly, we have concluded that it is inappropriate for the Department to conduct an "update" review using the information from the 1986–1987 review period. The Department will conduct a review of a more recent period before deciding whether to revoke the finding with respect to these two companies.

Comment 2: The ACA argues that the Department should not proceed with the review for these companies or revoke the order with respect to these companies without further verification of the respondents' questionnaire responses.

Respondents argue that ACA's basis for this contention was submitted to the Department in an untimely fashion, and should therefore be dismissed.

Department's Position: In December 1988 the Department verified the questionnaire responses of Daido Kogyo and Enuma, and in April 1989 of Daido Corporation (USA). These verifications were adequate to justify our proceeding with and concluding this review. The petitioner's comment as it pertains to revocation is moot in light of our decision not to revoke, outlined in Comment #1.

Comment 3: The ACA argues that the Department erred in including the cost of export selling expenses as part of Daido Kogyo's and Enuma's home market indirect selling expenses. Petitioner argues that these export selling expenses should instead have been included in the pool of U.S. indirect selling expenses.

Department's Position: We agree. For these final results we have recalculated a foreign market value for both respondents with export selling expenses included as part of the U.S. indirect selling expenses, rather than as part of the home market indirect selling expenses.

Comment 4: The ACA argues that the Department erred in calculating a U.S. inventory carrying cost adjustment for Daido Kogyo and Enuma that included expenses only for the time the merchandise was in inventory at the U.S. warehouse. Petitioner argues that the inventory carrying cost adjustment should include those expenses incurred while the merchandise sat in inventory in Japan, and also while it was in transit to the U.S. warehouse.

Respondent replies that the merchandise spends little or no time in warehouse in Japan after the sale is finalized, and that the total time the merchandise spends in transit to the U.S. warehouse after it leaves the Japanese factory is usually thirty days.

Department's Position: We agree with the petitioner. For these final results we have recalculated inventory carrying costs for both respondents to include the time that the merchandise sat in inventory in Japan and the time the merchandise was in transit to the United States. Because the questionnaire responses provided no information regarding that additional time, and the

petitioner failed to suggest a time period to use in making this calculation, we have used as best information available the thirty day figure suggested by the respondents in their reply brief.

Comment 5: The ACA argues that the Department erred in calculating Enuma's FMV by making both an imputed credit adjustment and a note discount (i.e., promissory note) adjustment. Petitioner argues that making these deductions was contrary to the methodology laid down in the Department's verification report, which indicated that we would employ an imputed credit cost instead of the claimed adjustments for loan interest and note discounts.

Enuma argues that the Department was justified in making the adjustment for both home market credit and promissory notes because the department included only Enuma's accounts receivable in the calculation of imputed credit cost, and did not include promissory notes. The methodology prescribed in the verification report presupposed that the costs of promissory notes would be included as part of the home market credit adjustment. Because the costs of the promissory notes were not included in the home market credit adjustment, the department was justified in making a separate adjustment for them.

Department's Position: In light of our decision to include promissory notes along with accounts receivable in the calculation of imputed credit (see our response to Comment #6), an additional adjustment for promissory notes would constitute double counting. Thus, we have recalculated Enuma's FMV without making an adjustment for promissory notes separate from the imputed credit adjustment.

Comment 6: Daido Kogyo argues that the Department understated its home market credit expense by not including the cost of holding promissory notes as part of the imputed credit deduction. The ACA counters that the Department's calculation of an imputed credit cost was correct because an imputed credit calculation is intended as a substitute for other types of payment data. To include promissory notes in the calculation of imputed credit would result in double counting of Daido Kogyo's credit expenses. Additionally, Daido Kogyo's promissory notes data included both long-term and short-term amounts, as did Enuma's. It was for this reason that in its verification report the Department indicated that it would substitute an imputed credit cost for loan interest and note discounts (i.e., promissory notes) in calculating Enuma's FMV.

Department's Position: We agree with Daido Kogyo that the cost of holding promissory notes is a legitimate credit expense, and should have been included in the imputed credit calculation. For these final results we have recalculated Daido Kogyo's and Enuma's imputed credit figure to include both accounts receivable and promissory notes

Comment 7: Daido Kogyo and Enuma argue that the Department incorrectly calculated Daido Corporation (USA)'s direct selling expenses by allocating total direct selling expenses over only covered merchandise, rather than over all roller chain sales. They argue that the Department should use the methodology prescribed in the verification report, which allocated total direct selling expenses over total roller chain sales. This method of allocation is justified where, as here, it is impossible to segregate direct selling expenses attributable to in-scope merchandise from direct selling expenses attributable to out-of-scope merchandise. Petitioner counters that the department correctly calculated Daido Corporation (USA)'s direct selling expenses. There is nothing in the verification report which states that the direct selling expenses were attributable to both in-scope and out-of-scope merchandise, and the Department is justified in deviating from the methodology prescribed in the verification report if, after verification, it has determined that other available information is more accurate.

Department's Position: We agree with the respondents. While no documentation exists on the record that attributes the reported direct selling expenses to both in-scope and out-of-scope merchandise, the methodology prescribed in the verification report indicates that the verifier understood that all roller chain sales were covered. The deviation from the methodology laid down in the verification report was not based on better information than was available to the verifier. Therefore, we have recalculated Daido Corporation (USA)'s direct selling expense to conform with the methodology prescribed in the verification report.

Comment 8: Daido Kogyo and Enuma argue that the Department erred in calculating their home market inventory carrying costs by including in the calculation only finished inventory. Respondents argue that the amounts for "finished, but not packed," "semi-finished inventory," "materials inventory," and "sub-materials inventory" should also be included in the calculation. To include these expenses would be consistent with the Department's policy of calculating an imputed expense for the cost of holding and carrying inventory.

Petitioner counters that there is no basis for Daido Kagyo's and Enuma's argument because the Department has stated on numerous occasions that imputed carrying costs are based on the cost of carrying finished goods in inventory, not goods in progress or parts.

Department's Position: We agree with the petitioner. In calculating an inventory carrying cost, it is the Department's practice to include only finished inventory. See, e.g., Color Television Receivers from the Republic of Korea, 55 FR 26225, 26229 (June 27, 1990), and Color Television Receivers from the Republic of Korea, 56 FR 12701, 12705 (March 27, 1991). To do otherwise would be inconsistent with our policy on credit adjustments, where we make a credit adjustment for only finished merchandise. Thus, our calculations of home market inventory carrying costs in these final results remain unchanged from those of the preliminary results.

Comment: 9 Daido Kogyo and Enuma argue that in calculating their imputed credit expense for purchase price sales, the Department erred in basing the calculation on Daido Corporation (USA)'s credit expense experience. Daido Corporation (USA) is not involved in any of Daido Kogyo's or Enuma's purchase price sales. Thus, its credit expense experience is irrelevant. Rather, the Department should have made a transaction-specific calculation for credit expenses based on the information the respondents submitted regarding their purchase price sales.

The ACA counters that the Department was justified in using Daido Corporation (USA)'s credit experience as the best information available in light of the respondents' failure to provide the Department with information on the credit expense experience of the business entity that handles their purchase price sales.

Department's Position: We agree with the respondents. The Department prefers to make transaction-specific calculations whenever possible. We have used each respondent's reported home market interest rate in making this calculation.

Final Results of Review

Based on our analysis of the comments received, we have revised the final results for Daido Kogyo Co., Ltd. The final margins are as follows:

Manufacturer	Period	Margin (percent)
Daido Kogyo Co., Ltd.	04/01/86–03/31/87	0.16
Enuma Chain Manufacturing Co., Ltd.	04/01/86–03/31/87	0.09

With regard to the Department's notice of intent to revoke, we have determined not to revoke the finding with regard to Daido Kogyo and Enuma because the date covered during this review is now more than four years old. We will conduct a review of these two companies for a more recent period before determining whether revocation is warranted.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of roller chain, other than bicycle, from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) Since the weighted-average margins for Daido Kogyo Co., Ltd., and Enuma Chain Manufacturing Co., Ltd., are less than 0.50 percent, and therefore de minimis for cash deposit purposes, the Department will not require a cash deposit for shipments from these manufacturers; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews, or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, another review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the final results of the most recent review in which the manufacturer received a company-specific rate, or the rate for the manufacturer from the less-than-fair-value investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm, will be 7.04 percent. This is the most current non-BIA rate for any firm in this proceeding.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.53a(a) of the Commerce Regulations (19 CFR 353.53a(a)(1985)).

Dated: September 26, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–23846 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–DS–M

Institute of Human Origin, et al.; Notice of Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–033R.

Applicant: Institute of Human Origins, Geochronology Center, 2453 Ridge Road, Berkeley, CA 94709.

Instrument: Mass Spectrometer, Model MAP 215–50.

Manufacturer: Mass Analyzer Products Ltd., United Kingdom. Original notice of this resubmitted application was published in the Federal Register of April 3, 1991.

Docket Number: 91–130.

Applicant: University of Rhode Island, Kingston, RI 02881.

Instrument: Gas Source Isotope Ratio Mass Spectrometer, Model MAT 252.

Manufacturer: Finnigan MAT, West Germany.

Intended Use: The instrument will be used to study dissolved gases in seawater, dissolved gases in undersea hot springs, air samples from the troposphere and stratosphere, air samples trapped in ice taken from the Greenland and Antarctic ice sheets, and naturally occurring calcium carbonates. In addition, the instrument will be used in the courses Oceanography 599 and 699 to train students in independent research at the state of the art.

Application Received by Commissioner of Customs: August 28, 1991.

Docket Number: 91–131.

Applicant: University of Wisconsin-Madison, Center for X-Ray Lithography, 3731 Schneider Drive, Stoughton, WI 53589–3097.

Instrument: Semiconductor Stopper/Aligner System, Model XRS–200.

Manufacturer: Karl Suss, West Germany.

Intended Use: The instrument will be used in research in which the following will be performed.

1. Linewidth variation studies to determine tolerance to changes in the environment such as temperature, humidity, contamination, and other variables of the process recipe.

2. Resist sensitivity to X-ray and resolution capabilities.

3. Mask damage as a result of use and exposure to X-rays.

4. Stepper alignment capabilities to determine overlay accuracy.

5. Process latitude studies.

Application Received by Commissioner of Customs: August 28, 1991.

Docket Number: 91–133.

Applicant: Emory University, Department of Chemistry, 1515 Pierce Drive, Atlanta, GA 30322.

Instrument: Microvolume Stopped-Flow Spectrofluorimeter.

Manufacturer: Hi-Tech, United Kingdom.

Intended Use: The instrument will be used to follow reaction rates such as drug binding to DNA and decomposition of vitamin B_{12}.

Application Received by Commissioner of Customs: August 30. 1991.

Docket Number: 91–135.

Applicant: Temple University of the Commonwealth System of Higher Education, University Services Building, 1601 North Broad Street, Philadelphia, PA 19122.

Instrument: Rotating Anode X-ray Generator, Model RU–200.

Manufacturer: Rigaku Corporation, Japan.

Intended Use: The instrument will be used for the study of organic solid and liquid surfaces. X-ray scattering experiments will be conducted in an unconventional geometry—the grazing x-ray incidence diffraction geometry—to obtain the in-plane structure of surfaces.

Application Received by Commissioner of Customs: September 9, 1991.

Docket Number: 91–136.

Applicant: The University of Toledo, 2801 Bancroft Street, Toledo, OH 43606.

Instrument: Electron Microscope, Model EM 902/PC.

Manufacturer: Carl Zeiss, West Germany.

Intended Use: The instrument will be used for the examination of structure-function relationships at the microscopic level, and cytological, histochemical and immunochemical localization of cellular activities and structures.

Application Received by Commissioner of Customs: September 11, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–23848 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–DS–M

Michigan State University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91–078.

Applicant: Michigan State University, East Lansing, MI 48824.

Instrument: Excimer Laser, 'Model EMG–160T.

Manufacturer: Lambda Physik Inc., West Germany.

Intended Use: See notice at 56 FR 28372, June 20, 1991.

Reasons: The foreign instrument provides tunable operation at 193 nm with a bandwidth of 0.005 nm.

Docket Number: 91–097.

Applicant: Northeast Missouri State University, Kirksville, MO 63501.

Instrument: SF–41 Stopped Flow Sample Handling Unit with SU–40A Spectrophotometer Unit.

Manufacturer: Hi-Tech Scientific, United Kingdom.

Intended Use: See notice at 56 FR 34187, July 26, 1991.

Reasons: The foreign instrument provides: (1) Sub millisecond dead time, (2) a temperature range of −75 to +75C with accuracy of ±1° and (3) an inert flow path (<1 ppm oxygen).

Docket Number: 91–100.

Applicant: Louisiana State University, Baton Rouge, LA 70803.

Instrument: Mass Spectrometer, Model 262V.

Manufacturer: Finnigan MAT, West Germany.

Intended Use: See notice at 56 FR 36776, August 1, 1991.

Reasons: The foreign instrument provides a six-element multicollector and a precision of ±0.001% for 87Sr/86Sr with strontium samples as small as 300 nanograms.

Docket Number: 91–102.

Applicant: California Institute of Technology, Pasadena, CA 91125.

Instrument: Mass Spectrometer System, Model 252.

Manufacturer: Finnigan MAT, West Germany.

Intended Use: See notice at 56 FR 36776, August 1, 1991.

Reasons: The foreign instrument provides an internal precision of 0.005 per mil for 3 bar microliter samples of CO_2 and an inlet system for a laser-fluorination vacuum extraction line.

Docket Number: 91–105.

Applicant: University of Cincinnati, Cincinnati, OH 45224.

Instrument: Mass Spectrometer, Model ICP200LA.

Manufacturer: Turner Scientific, United Kingdom.

Intended Use: See notice at 56 FR 36776, August 1, 1991.

Reasons: The foreign instrument provides: (1) Sensitivity of 2.0×10^{7} ions/second/ppm for indium, (2) a dual detector system (Faraday and electron multiplier) and (3) a glow discharge plasma ion source.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–23849 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

[Docket No. 910772–1172]

RIN 0693–AA88

Proposed Federal Information Proceeding Standard (FIPS) for Initial Graphics Exchange Specification (IGES)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) is proposed for Initial Graphics Exchange Specification (IGES). The proposed FIPS will adopt ASME/ANSI Y14.26M–1989, Digital Representation for Communication of Product Definition Data, which specifies file structure and syntactical definition, and defines the representation of geometric, topological, and non-geometric product definition data.

Prior to the submission of the proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications (ASME/ANSI Y14.26M–1989) from American Society of Mechanical Engineers, Attn: Customer Service, 22 Law Drive, Fairfield, NJ 07007, telephone 1–800–321–2633, FAX 212/705–7674.

DATES: Comments on this proposed FIPS must be received on or before January 2, 1992.

ADDRESSES: Written comments concerning the proposed FIPS should be sent to: Director, National Computer Systems Laboratory, ATTN: Proposed FIPS for IGES, Technology Building, room B154, National Institute of

Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Benigni, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3266.

Dated: September 27, 1991.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication _____,

(Date)

Announcing the Standard

Initial Graphics Exchange Specification (IGES)

Federal Information Processing Standards Publication (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. *Name of Standard.* Initial Graphics Exchange Specification (IFES) (FIPS PUB _____).

2. *Category of Standard.* Software Standard; Graphics and Information Interchange.

3. *Explanation.* This publication announces the adoption of American National Standard Digital Representation for Communication of Product Definition Data, ASME/ANSI Y14.26M–1989, as a Federal Information Processing Standard (FIPS). ASME/ANSI Y14.26M–1989, more commonly known as the Initial Graphics Exchange Specification (IGES), specifies file structure and syntactical definition, and defines the representation of geometric, topological, and non-geometric product definition data. ASME/ANSI Y14.26M–1989 establishes information structures for the digital representation and communication of product definition data. Use of this standard permits the compatible exchange of product definition data used by various computer-aided design and computer-aided manufacturing (CAD/CAM) systems.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology (Computer Systems Laboratory).

6. *Cross Index.* a. American National Standard Digital Representation for Communication of Product Definition Data, ASME/ANSI Y14.26–1989.

7. *Related Documents.* a. NBSIR 88–3813, Initial Graphics Exchange Specification (IGES) Version 4.0.

b. NISTIR 4412, Initial Graphics Exchange Specification (IGES) Version 5.0.

c. Federal Information Processing Standards Publication 29–2, Interpretation Procedures for Federal Information Processing Standards for Software.

d. Federal Information Resources Management Regulation (FIRMR) 201–39, Acquisition of Federal Information Processing (FIP) Resources by Contracting.

8. *Objectives.* Federal standards for electronic interchange permit Federal departments and agencies to exercise more effective control over the production, management, and use of the government's information resources. The primary objectives specific to IGES are to:

—Allow digital exchange of product definition data independent of any particular CAD/CAM system.
—Enable users of CAD/CAM equipment to effectively exchange product definition data throughout the life cycle of a given product.
—Exchange digital representations of product definition data in various forms: Illustrations, 2-dimensional drawings, 3-dimensional edge-vertex models, surface models, solids models, and complete product models.
—Aid CAD/CAM equipment manufacturers as a guideline for identifying useful combinations of product definition data capabilities in any CAD/CAM system.
—Reduce the cost of design by achieving increased designer productivity and design accuracy through the use of a standard for product definition data.
—Reduce the overall life-cycle cost for digital systems by establishing a common exchange format for the transfer of product definition data digitally across organizational boundaries.

9. *Applicability.* a. This graphics information interchange or software standard is intended for the exchange of CAD/CAM product definition data among applications and programs that are either developed or acquired for government use. FIPS IGES provides a mechanism for the digital exchange of database information among computer-aided systems. It is designed to support applications which enhance 2-dimensional or 3-dimensional geometry representations with rich attribute information. It provides a data format for describing product design and manufacturing information that has been created and stored in a computer-readable form. IGES information is intended for machine interpretation at the receiving site, but sometimes requires human intervention.

b. The use of FIPS IGES is strongly recommended for exchange between product definition applications when one or more of the following situations exist:

—The product definition application or program is under constant review, and changes may result frequently.
—It is anticipated that the life of the data files will be longer than the life of the presently utilized CAD/CAM equipment.
—The application is being designed centrally for a decentralized system that may employ computers of different makes and models and different CAD/CAM devices.
—The product definition application may run on equipment other than that on which it was developed.
—The product definition data is to be used and maintained by other than the original designer.
—The product definition data is or is likely to be used by organizations outside the Federal Government.
—It is desired to have the design understood by multiple people, groups, or organizations.

c. Functionality not specifically cited in IGES should be used only when such functionality cannot be implemented with standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard features may make the interchange of IGES files, future conversion to a revised standard or replacement CAD/CAM systems more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of a CAD/CAM system employing a different data transfer mechanism other than that provided by FIPS IGES. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

10. *Specifications.* The AMSE/ANSI Y14.26M–1989 standard for IGES, describes the form of the physical file but not how IGES preprocessor or postprocessor software should behave. There is a lack of fundamental rules to describe minimum levels of processor functionality. The requirements specified herein will be part of this standard and apply to Federal

Government implementations and procurements of this standard:

Conformance Requirements. The conformance rules given here are based on three principles. First, conformance is defined in terms of a conforming data file. Second, conformance is defined for a single processor in isolation (i.e., not in terms of interoperability). Third, conformance is defined separately for preprocessor and postprocessor.

These requirements detail minimum conformance criteria for processors. All processors claiming conformance to this version of the standard must adhere to the general rules below. In addition, conforming processors must adhere to all the rules appropriate to specific features such as entities defined within ASME/ANSI Y14.26M–1989.

Conformance Rules for Data Files. A conforming data file shall be syntactically, semantically and structurally correct as defined by this standard. This applies to all sections of the data file.

Conformance Rules for Preprocessors. A preprocessor which claims conformance to this standard must satisfy the following rule:

—A conforming preprocessor shall create only conforming data files which correctly represent the native database which was input to the preprocessor.

Conformance Rules for Postprocessors. A postprocessor, which claims conformance to this standard, must satisfy the following rule:

—A conforming postprocessor shall be capable of reading and correctly processing any conforming data file without halting or aborting, such that it produces the correct results.

Additional conformance rules may be specified for particular applications or by specific purchasers of IGES processors. As long as these rules do not contradict the conformance rules defined within FIPS IGES, such processors would still conform.

Processor Reporting. It is desirable and recommended that processors report on the following. (This is not a conformance requirement at this time.) Preprocessors should report on any CAD/CAM system feature or entity which has not been written to the IGES file. Postprocessors should (1) report on any IGES entities or features which have been discarded, and (2) handle any errors encountered within the IGES file in a preferred manner. The following techniques are suggested.

Selected Methodology. The functions of an IGES postprocessor are similar to those of a compiler. The postprocessor shall recognize errors encountered when an IGES file is processed, shall provide the user with an indication of the error, and shall continue processing the file if possible.

The key elements of a diagnostic capability are:

—Determine Seriousness of Error. The postprocessor determines the impact the error will have on the processing of the file and categorizes the error. Possible categories include FATAL ERROR, ERROR, WARNING.

—Continue Processing when Possible. After an error is identified, the post-processor attempts to continue processing the file. Many errors will not prevent processing, and multiple errors that may exist will need to be identified. Options can be included to stop processing if a fatal error occurs, or a specific number of errors occur, to avoid wasting computer processing time when a file is not processable.

—Provide Meaningful Error Messages. The postprocessor provides complete error messages that include a description of the error and the location of the error in the file. For display on a terminal, the postprocessor should also provide a summary description of the error and the actions taken.

Common Errors. The following table lists some common errors. This list is not complete but contains a variety of errors. After each error message, the list contains a suggested action. The processor may need to take some corrective action before continuing after non-fatal errors. The processor should always output some type of message to the user.

Possible error [1]	Suggested action
Global delimiters in error	Terminate.
Tape format—not ASCII	Terminate.
Binary section missing—binary format.	Terminate.
Entity not supported	Bypass & continue.
Global version not supported	Bypass & continue.
No end of record delimiter	Bypass & continue.
Terminate section missing	Continue.
DE section missing	Terminate.
Sequence field:	
Out of order	Continue.
Missing	Continue.
Wrong format	Continue.
Parameters:	
Wrong type	Use default & continue.
Invalid value 106—(IP parameter not equal to 1,2,3).	Adjust & continue.
Endpoints not on circle/conic	Adjust & continue.
Pointers not in DE range	Continue.
Out of range	Continue.

[1] Common Processing Errors.

11. *Implementation.* The implementation of this standard involves three areas of consideration: acquisition of IGES implementations, interpretation of FIPS IGES, and validation of IGES implementations.

11.1 *Acquisition of IGES Implementations.* This publication is effective six months after date of publication of the final document in the **Federal Register.** Product definition systems acquired for Federal use after this date shall support IGES preprocessors and postprocessors. Conformance to this standard should be considered whether the CAD/CAM systems are developed internally, acquired as part of a system procurement, acquired by separate procurement, used under a leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce product definition systems conforming to this standard. The transition period begins on the effective date and continues for one (1) year thereafter. The provisions of this publication apply to orders placed after the effective date; however, an IGES implementation conforming to FIPS IGES, if available, may be acquired for use prior to the effective date.

ASME/ANSI Y14.26M–1989 does not specify conformance requirements; in lieu of this, the conformance requirements enumerated herein, section 10., apply.

11.2 *Interpretation of this FIPS.* NIST provides for the resolution of questions regarding FIPS IGES and its requirements. All questions concerning the interpretation of FIPS IGES should be addressed to: Director, Computer Systems Laboratory; Attn: FIPS IGES Interpretation; National Institute of Standards and Technology; Gaithersburg, MD 20899.

11.3 *Validation of IGES Implementations.* Validation of IGES implementations is not mandatory at this time. Future versions of this FIPS may mandate the validation of IGES implementations for government use. Testing of an implementation's conformance to this FIPS IGES will be optional by the agency. Until a formal conformance testing service is available, government agencies acquiring implementations in accordance with this standard may wish to require testing for conformance, interoperability, and performance. The tests to be administered and the testing organization are at the discretion of the agency Acquisition Authority.

12. *Waivers.* Under certain exceptional circumstances, the heads of

Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agencies may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552 (b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 91–23794 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Chevron U.S.A., Inc. From an Objection by the State of Florida

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On March 28, 1991, Chevron U.S.A., Inc. (Appellant) filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of Florida (State) to the Appellant's consistency certification for a Plan of Exploration to conduct oil and gas drilling activities on the Outer Continental Shelf at Destin Dome Block 97, Lease OCS–G 8336, located approximately 25 miles from Perdido Key, Florida.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on both Grounds I and II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

To make a determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. 15 CFR 930.122.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 and 930.122. Comments are due within 30 days of the publication of this notice and should be sent to Ms. Mary Gray Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington DC 20235. Copies of comments should also be sent to Ms. Carol M. Browner, Secretary, Florida Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

All non-confidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the office of the Assistant General Counsel for Ocean Services, NOAA

FOR ADDITIONAL INFORMATION CONTACT: Mary Gray Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: September 23, 1991.

Thomas A. Campbell,

General Counsel.

[FR Doc. 91–23831 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–08–M

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for supplemental input on Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). Oral and/or written presentations will be accepted. All hearings will begin at 7 p.m. and will be tape-recorded with the tapes filed as the official transcript of the hearings.

DATES: Written comments will be accepted until October 10, 1991. The hearings are scheduled as follows:

1. September 30, 1991, Morehead City, NC.
2. October 1, 1991, Manteo, NC.
3. October 2, 1991, Norfolk, VA.

ADDRESSES: Send written comments: John C. Bryson, Executive Director of the Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

The hearings will be held at the following locations:

1. Morehead City—Carteret Community College, Jacelyn Aud., 3505 Arendell Street, Morehead City, NC.
2. Manteo—North Carolina Aquarium, Airport Road, Roanoke Island, Manteo, NC.
3. Norfolk—Quality Inn Lake Wright—Virginia Room, 6280 Northampton Blvd., Norfolk, VA.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, (302–674–2331).

SUPPLEMENTARY INFORMATION: The purpose of these supplemental hearings is to obtain public comment on provisions to be added to Amendment 2 to minimize capture of sea turtles in the summer flounder fishery. The NMFS has notified the Council that such provisions must be added in order for the amendment to be approvable.

The FMP is a joint effort in planning of the Atlantic States Marine Fisheries Commission, the states, and the Council. It is critical to the success of the FMP that the affected states be given time to allow them to adjust their regulations to be compatible with those of the FMP.

The additional provisions that will be considered may include the following issues, which are raised for the purpose of obtaining public hearing comments:

1. Methods to document the extent to which and the times when the fishery and sea turtles occur in the same areas. These methods may include sea sampling, aerial surveys, pound net data, water temperature data, turtle stranding data, and other types of evidence.

2. Methods to prevent or minimize the incidental capture of sea turtles in the fishery during times of the year when the fishery and sea turtles are expected to co-occur. These methods may include requirements to limit two times, requirements to use turtle excluder devices, mandatory observer coverage, limitations on the fishery, and the partial or total closure of the fishery.

3. Methods to coordinate flounder management measures and turtle protection efforts with the State of North Carolina and other States.

Dated: September 27, 1991.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–23772 Filed 9–27–91; 5:03 pm]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Comprehensive Data Gathering Committee (Committee) will hold a public meeting on October 7, 1991, from 10 a.m. to 5 p.m. and October 8, 1991, from 8 a.m. to 12 noon in the conference room of the Pacific States Marine Fisheries Commission, 2501 SW. First Avenue, Portland, Oregon.

The Committee will draft a report on the need for a program to gather fishery data from vessels at sea as well as data that can be obtained when vessels return to port. The Committee will also discuss biological information on various species, the amounts of fish that are discarded at sea, the effect of various regulations on such discards, and associated costs and funding sources. This report will be reviewed by industry and management agency representatives prior to submission to the Council at its upcoming November 12–15 meeting in Milbrae, California.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: September 27, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–23742 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a public meeting beginning at 12:30 p.m. on October 8, 1991, and ending at 5 p.m., on October 10, 1991, in the Oregon Department of Fish and Wildlife building, 2501 SW First Avenue, suite 200, Portland, Oregon.

The GMT will prepare the Stock Assessment and Fishery Evaluation document for the 1992 fishing year and final social, economic and biological analyses of proposed management changes for 1992. Other issues pertaining to management of the west coast groundfish fisheries may also be discussed.

For more information, contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: September 27, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–23743 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public hearing.

SUMMARY: The National Marine Fisheries Service (NMFS) will hold a hearing to solicit comments on the proposed taking and importation of beluga whales (*Delphinapterus leucas*). The John G. Shedd Aquarium, 1200 South Lake Shore Drive, Chicago, Illinois, applied for a public display permit, under the Marine Mammal Protection Act and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), to capture, import and maintain for public display at the Shedd Aquarium four (4) beluga whales. The animals would be taken from tidal waters or estuarine waters of the western Hudson Bay in the vicinity of Churchill, Manitoba, Canada. NMFS has received several written requests for a public hearing along with comments concerning methods of capture, the status of the population and stock from which this removal from the wild is proposed and other matters concerning the proposed capture and importation by the Shedd Aquarium. The purpose of the hearing is to give interested members of the public and other government agencies an opportunity to comment further on the application. The scope of the hearing will be limited to issues relevant to this permit application. Members of the public are invited to attend and offer comments relevant to the above stated issues. Comments will be limited to those within the stated scope of the hearing.

DATES: The hearing will be held on Friday, October 18, 1991, at 9:30 a.m. Persons wishing to testify at this hearing must notify the Information Contact

listed below by October 16, 1991. Written comments will be accepted through October 28, 1991, addressed to the Information Contact.

ADDRESSES: The hearing will be held in the Lobby Conference Room, Silver Spring Metro Center #1, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Ann D. Terbush, Chief, Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, SSMC#1, Silver Spring, Maryland 20910 (301–427–2289).

SUPPLEMENTARY INFORMATION: The notice of application for a public display permit was published on Tuesday, August 20, 1991 (56 FR 41335). Documents submitted in connection with the above application are available for review by appointment in the Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910 (301/427–2289).

Dated: October 1, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–24009 Filed 10–2–91; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision to Expand the Marine Corps Base Camp Lejeune; Onslow County, NC

Decision

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to expand Marine Corps Base Camp Lejeune, Onslow County, North Carolina. Expansion will entail the acquisition of 166 km² or approximately 40,000 acres of contiguous lands to the west and south of the existing Base collectively referred to as the Greater Sandy Run Area. The acquisition site is bounded on the east and southeast by U.S. Highway 17, by State Road 50 on the southwest and west, and by Padgett, Haws Run, Dawson Dabin, and High Hill Roads on the north. Certain residential holdings at various locations along the northern perimeter of the proposed acquisition site have been out-parceled (excluded from acquisition). A 0.5 km² (129 acre) tract west of State Road 50 which corresponds to the historic boundary of the abandoned Army airfield at Camp Davis in the southern tip of the Greater Sandy Run Area has been included in the total area of land to be acquired.

The Marine Corps must administer sufficient federal lands to provide training areas and facilities necessary for operational units to achieve and maintain combat readiness. Marine Corps Base Camp Lejeune currently does not contain sufficient land resources required to accommodate training and facility requirements. These deficiencies in training areas and facilities at Camp Lejeune were identified and verified by two previous baseline studies, on a site-specific basis (Special Training Analysis) and on a Marine Corps wide basis (Land and Training Area Requirements Study). Major deficiencies include a shortfall of more than 50,000 acres in available maneuver area, the number and type of standard ranges, and adequate impact areas. Exacerbating these deficiencies is the new training regimen that focuses on the individual infantryman, known as Marine Battle Skills Training, that requires the training of an additional 22,000 Marines at Camp Lejeune facilities annually. Planning for additional ranges and maneuver areas at Camp Lejeune has been greatly obstructed by the presence of natural and man-made constraints to land use, rendering much of the undeveloped areas unavailable for training use. To alleviate this situation, Base officials initiated a search for a course of action to resolve the documented training area deficiencies.

Alternative Analysis and Review Process

Thirteen alternatives were proposed and analyzed as potential solutions to existing training need at Camp Lejeune. These alternatives include no action, increasing off-base training, relocation of the Marine Corps Base, and a variety of proposals combining realignment of existing ranges and/or purchase of up to 79,000 acres of land.

To assist with the evaluation of the 13 alternatives, criteria were established to make meaningful comparisons. The criteria involved three primary aspects: (1) Operational (i.e., satisfying military training requirements), (2) environmental impacts, and (3) socioeconomic impacts. Alternatives which would not satisfy training requirements were discounted. Alternatives satisfying the operational criteria, environmental and socioeconomic impacts were afforded significant weight.

Based on this analysis, the following three feasible alternatives were selected.

Alternative B—proposes a single impact area enlargement, relocation of firing range to create additional maneuver area, and the acquisition of a total of 209 km² (51,600 acres) east and west of State Road 50 and along State Road 1103.

Alternate E—(Preferred Alternative): Proposes the repositioning of a series of small arms ranges on the existing Base to achieve more effective training land use and the acquisition of 166 square kilometers (40,000 acres) of contiguous land to the west and south of the Base known as the Greater Sandy Run Area.

Alternative G—proposes a realignment of existing ranges, acquisition of the Greater Sandy Run Area, and the Acquisition of 38 square kilometers (20,500 acres) located between the Greater Sandy Run Area and Holly Shelter, known as the Southwest Buffer.

All three alternatives provide additional land area continuous to the existing base, room for some maneuver area, and room for ranges and impacts areas. Additionally, the land to be acquired in each alternative is largely owned by one entity and largely unpopulated. A quantified comparison of these three alternatives was conducted using operational, environmental, and socioeconomic criteria. These criteria include acreage of usable (trafficable) land, gain in maneuver area, acreage of land to be cleared, acreage of wetlands affected, number of homesites and cultural resources displaced, mileage of roads closed and powerline affected, and restricted airspace requirements for each alternative. Application of these alternatives and comparison of the strengths and weaknesses of each alternative resulted in the selection of the preferred alternative which is both environmentally and socio-economically preferred.

Alternative E is selected based on its balanced approach to satisfying range and maneuver area requirements, minimizing of socioeconomic impacts, its environmental character, and its availability for purchase. Due to recent localized growth and development in Jacksonville and along the coast, few large tracts of land in Onslow County remain unpopulated. This greatly limits the acquisition possibilities for Camp Lejeune, especially for lands contiguous with the existing Base. The alternative has the fewest socioeconomic impacts in the area, including the number of residences being displaced, will

minimize the loss to the County of high-qualify, potential revenue-generating land, will minimize noise disturbance in densely populated areas, and will impose the fewest road use conflicts. Moreover, International Paper Company, which currently owns approximately 89 percent of the Greater Sandy Run Area, has expressed a willingness to enter into a purchase agreement with the U.S. Government for this site.

The environmental analysis included scoping of the proposed project. Potentially affected parties were contacted by letter, and two public scoping meetings were conducted. These efforts provided public comment from federal, state, and local agencies, as well as a number of interested individuals. The Marine Corps prepared a Draft Environmental Impact Statement (DEIS) which was filed with EPA in August 1989 and publicly reviewed through October 1989. An additional public hearing was held at Camp Lejeune in September 1989. As a result of the public comments received, and to further mitigate environmental impacts, the Marine Corps made necessary modifications to the proposal. A Final Environmental Impact Statement (FEIS) was filed with the EPA and made available to the public in May 1991.

Planned Management and Use

The military training concept for the Greater Sandy Run Area is designed to fulfill the Base's firing range requirements. Ten multiple use firing ranges, an ordnance impact area, and the continued use of the Camp Davis airfield represent the primary components of the preliminary land use concept. Nine of these ranges, along with their standard support facilities, are being considered for siting in upland along the perimeter of a large pocosin in the northern portion of the GSRA. Ranges which would satisfy requirements for small arms qualification for infantrymen include two automated field firing ranges. Three multi-purpose machine gun ranges, two M–19 ranges, a DRAGON/SMAW anti-armor range, and a TOW/DRAGON anti-tank missile range complete the series of nine ranges. These ranges would all share a centralized ordnance impact area which would serve as a target area for two of the ranges and as a safety zone for the remaining ranges. The ordnance impact area would be sited within the expansive northern portion of the Great Sandy Run Pocosin.

One highly specialized weapons range, the Multi-Purpose Range Complex-Heavy (MPRC–H), is proposed in the southern portion of the Greater Sandy Run Area. The MPRC–H is a collective training facility designed to be utilized by tanks and other assault vehicles, infantry, and helicopters to support the "train as you fight" training concept. The range would consist of three corridors and an expansive (5 km) target area. Helicopter ordnance targets and impact area would be included as a component of the MPRC–H. Other components of the training concept include 25 artillery positions and six mortar positions for firing into the ordnance impact area, six observation towers, three battalion bivouac sites, four helicopter tactical landing zones, a range maintenance facility, and arterial roads for inter-range travel.

The training concept requires provisions for the restriction of airspace over the Greater Sandy Run Area and continued use of the Camp Davis facility at the very southern end of the site. Due to the danger to non-participating aircraft inherent with the type of ground training proposed (firing of artillery), the airspace above the Greater Sandy Run Area would be maintained as Special Use Airspace under radar containment and positive control with restricted access during training periods.

Environmental Effects and Planned Mitigation

Environmental consequences resulting from the implementation of this action include localized effects on area soils, flora, and fauna. Surface disturbance would result from the construction of structures, roadways, and target arrays, impaction from vehicle and foot traffic, upheaval from exploding ordnance, and potentially, from fire damage. Vegetation loss due to clearing for firing ranges is estimated at 1,400 acres. Damage to vegetation would also also result from the effects of ordnance impact, repetitive foot and vehicle traffic, and fire damage. Wildlife impacts would result from localized destruction of habitat and stress due to anticipated human disturbance. An estimated 36 acres of wetlands would be filled for the construction of the Multi-Purpose Range Complex-Heavy and the range perimeter road.

Despite the prevalence of pocosins and hardwood swamp forests across the Greater Sandy Run Area, adequate upland area is available to accommodate significant range and maneuver area needs. A majority of the tract, both upland and wetland, has been altered by timber management practices including ditching, clear-cutting of native vegetation, and planting of expansive loblolly pine stands. Only one-third of the pocosins remain unaltered. While little clearing for timber has occurred within the swamp forests, some stream beds have been artificially channelized as part of the ditching network. Area wildlife populations are believed to be only a remanant of those endemic to the area prior to the implementation of intensive timber management techniques.

The degraded environment of the Greater Sandy Run Area substantially lessens the adverse effects of constructing and utilizing military training facilities on this site. The localized clearing of vegetation for firing ranges and their associated support facilities and service roads will take place largely in pine plantations where the natural vegetative cover has been removed. These even-aged pine forests attract few wildlife species compared to other biotic communities and are of less value as habitat. Additionally, the parcel's environmental character will be enhanced by the restoration of upland and wetland communities under Camp Lejeune's Long-Range Multiple Use Natural Resources Management Plan. The area's other natural resources, including wildlife, will be managed and protected in accordance with the Base natural resources management plan.

Wetland impacts will be minimized by utilizing upland sites for the placement of firing ranges and support facilities, plus utilizing existing roads through wetlands. The proposed impact area, classified as totally disturbed pocosin, will revert back to viable pocosin as natural drainage is restored. This will be done in conjunction with either planting pocosin vegetation, or allowing it to regenerate naturally. Wetlands can also be restored on previously drained sites. Another mitigation is the reestablishment of native juniper/white cedar stands within the Greater Sandy Run Area. Wetland impacts will be mitigated subject to the President's and the Navy's "no net loss" policies.

Several socioeconomic impacts will also result from the proposal. Aviation access will be impeded within the proposed 55.5 mi ^{2} Special Use Airspace over the parcel. Designation of the Special use Airspace as a Restricted Area will conflict with usage of low altitude route V–139 as well as three small public airports in the immediate vicinity. The proposed Restricted Area, however, will be stratified with positive, real-time control and utilization to accommodate joint/intermittent use by general and commercial aviation.

Incorporation of the Greater Sandy Run Area into Camp Lejeune will result in the displacement and relocation of approximately 50 single-family

residences (approximately 120 residents), and eight area cemeteries (approximately 242 graves). It is the intention of the Department of the Navy to negotiate settlement for the voluntary sale of these private residential holdings. In the event a negotiated sale cannot be achieved, condemnation proceedings would be instituted. These proceedings are governed by Federal law and regulation (Public Law 91–646). Both the law and relocation regulations are based on just compensation being paid to the owner.

Road conflicts generated by the project would include congestion from added military traffic on U.S. Highway 17 and the elimination of public use from the required closure of Moores Ridge Road (SR 1103), SR 1101 and SR 1102 (all of which are secondary dirt roads). The Marine Corps proposes to alleviate much of this conflict by the construction of three overpasses along Highway 17 to allow direct access to the acquisition property from the existing Base. The growth and development potential of Stump Sound Township in Onslow County would be limited. Although noise generated by weapons firing in the Greater Sandy Run Area cold reach levels which may affect the nearby communities of Verona, Dixon, Folkstone, and Holly Ridge, siting of firing positions is planned to prevent incompatible off-base noise.

Onslow County will lose real estate tax revenues, an estimated $60,480 annually, from the site upon acquisition by the federal government. A socioeconomic benefit of the proposed action, however, will be the positive input into the area's economy from the labor generated for the construction and maintenance of training facilities on the GSRA. Additionally, a long-term benefit will arise from revenue sharing between the Marine Corps and Onslow County associated with timber management on the GSRA.

All practicable means to avoid or minimize environmental harm have been adopted. Mitigation measures, as detailed above, are identified for impacts to flora and fauna, wetland impacts, potential soil and water impacts, road use conflicts, airspace use, noise, and public safety concerns. The area will be surveyed to identify any significant natural or cultural resources, and site planning procedures will be carried out to ensure full consideration of any potential impacts and compliance with applicable rules and regulations. As specific proposals to site and operate maneuver areas, firing ranges, weapon systems, and impact areas are developed, they will be assessed, evaluated, and documented in accordance with the National Environmental Policy Act, applicable regulations, and orders. The measures identified herein and additional site-specific mitigation measures will then be selected and adopted as appropriate.

In weighing the potential military gain versus the environmental and socioeconomic losses of the considered alternatives, the acquisition of the 166 km ^{2} (approximately 40,000 acre) Greater Sandy Run Area emerges as the best solution for addressing military training needs while minimizing detrimental impacts to the natural and human environment. This decision will be implemented following receipt of applicable budget authority and appropriations.

The Department of the Navy believes that there are no outstanding issues to be resolved with respect to this project. Questions regarding the environmental impact statement prepared for this action may be directed to Commanding General, Marine Corps Base, Camp Lejeune, North Carolina 26542–5001.

Dated: September 18, 1991.

Jacqueline E. Schafer,

Assistant Secretary of the Navy (Installations & Environment).

[FR Doc. 91–23833 Filed 10–2–91; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Hearings

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of hearings.

SUMMARY: The Council of Chief State School Officers, under contract to the National Assessment Governing Board (NAGB), U.S. Department of Education, is announcing two public hearings. These hearings will be conducted as part of the Council's contract for NAGB for the purpose of developing an assessment framework and specifications for the 1994 National Assessment of Educational Progress (NAEP) Geography Assessment Project. Public and private parties and organizations with an interest in the quality of geography assessment and geography education are invited to present written and oral testimony to the Council.

Each hearing will focus on recommendations for the 1994 NAEP geography assessment to be conducted at grades 4, 8, and 12. The results of the hearings are particularly important because they will provide for broad public input in developing the geography assessment framework to be used in the 1994 NAEP. This assessment will be used to measure progress toward the National Education Goal #3, relating to student achievement. These hearings are being conducted pursuant to Public Law 100–297, section 6(E), which states that "Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, local school administrators, parents and concerned members of the general public."

DATES: The dates of the two public hearings have been set as follows:

- October 26, 1991 in St. Paul, MN
- November 24, 1991 in Washington, DC

The first hearing will begin at 9:30 a.m. and adjourn at 12 noon. The second meeting will begin at 1:30 p.m. and adjourn at 3:30 p.m. If necessary, adjournment times may be extended.

Persons desiring to present oral statements at the hearing shall submit a notice of intent to appear, postmarked no fewer than fourteen (14) days prior to the scheduled meeting date. The scheduling of oral presentations cannot be guaranteed for notices of intent received less than 14 days prior to the hearing.

Notices of intent to present oral statements shall be mailed to: Council of Chief State School Officers, 379 Hall of the States, 400 North Capitol Street NW., Washington, DC 20001–1511, Attn: Susan Munroe—Public Hearings.

LOCATIONS: October 26th—Radisson St. Paul, St. Paul, Minnesota. November 24th—Sheraton Washington, Truman Room, Washington, DC.

WRITTEN STATEMENTS: Written Statements may be submitted for the public record in lieu of oral testimony up to 30 days after each hearing. These statements should be sent directly to the Council (see aforementioned address) in the following format:

I. Issues and Questions Addressed: Identify the issue(s) and question(s) to which the testimony is directed. For example, "grade 4 geography objectives," or "what constitutes appropriate assessment".

II. Summary: Briefly summarize the major points and recommendations presented in the testimony.

III. Discussion: The narrative should provide information, points of view and recommendations that will enable the Council to consider all factors relevant to the question(s) the testimony addresses. Respondents are encouraged

to limit this section of their written statements to five (5) pages. The discussions may be appended with documents of any length providing further explanation.

Written statements presented at each hearing will be accepted and incorporated into the public record. All written statements should follow the above format, as much as it is possible.

HEARINGS OBJECTIVES AND PROCEDURES: The Council seeks participation in the hearings from a wide spectrum of individuals and organizations to receive recommendations regarding the geographic proficiencies, knowledge, skills and strategies, to be assessed at grade levels 4, 8, and 12. The schedule of speakers shall be such as to provide a broad spectrum of viewpoints and interests, while being contained to a practical amount of time. The goal of the hearings is to provide the medium for maximum input and guidance from teachers, curriculum specialists, local school administrators, parents and concerned members of the general public. To assist in this, the Council of Chief State School Officers will give a brief introduction to the project at the hearing, with the majority of the time being devoted to presentations by scheduled speakers. As listed in the "**DATES**" section above, speakers wishing to present statements shall file notices of intent. To assist the Council in appropriately scheduling speakers, the written notice of intent to present oral testimony should include the following information: (1) Name, address and telephone number of each person to appear; (2) affiliation (if any); (3) a brief statement of the issues and/or concerns that will be addressed; and (4) whether a written statement will be submitted for the record. Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Speakers should plan to limit their total remarks to no more than five (5) minutes.

While it is anticipated that all persons desiring to do so will have an opportunity to speak, time limits may not allow this to occur. The Council will make the final determination on selection and scheduling of speakers.

However, all written statements presented at the hearings will be accepted and incorporated into the public record. Written statements submitted in lieu of oral testimony should be received no later than 30 days after each hearing in order to be included in the public record. Written statements received after this date will be accepted; however, inclusion in the public record cannot be guaranteed.

A staff member from the Council of Chief State School Officers will preside at each of the three hearings. The proceedings will be audiotaped. The hearings will also be signed for the hearing-impaired, and a bilingual speaker (Spanish-English) will be available on site.

ADDITIONAL INFORMATION: A draft framework outline for the 1994 assessment and draft assessment guidelines will be made available to anyone wishing to obtain more specifics on the project. Contact the Council of Chief State Officers at (202) 624–8822.

STEPS AFTER HEARING: The Council will review and analyze all comments and opinions received in response to this announcement. A report of the outcomes of these public hearings will be made available to the public upon request after May 1992.

The results of this public testimony, along with the Council's Geography Consensus committee work, will be used to formulate recommendations on the 1994 geography assessment for the National Assessment Governing Board. The Board, charged with developing the assessment framework and specifications, will take final action on the Council's recommendations in May 1992. The following documents will be forthcoming from these coordinated activities:

(1) A framework for the 1994 geography assessment, including geography objectives to guide the 1994 assessment, specifications for the test content, and item specifications;

(2) Background variables to be collected, as well as achievement data on a national basis, for example, on students, teachers and schools. Background variables should stress factors that are known to be consistently associated with geographic achievement, those that address distributional or equity issues, and those that are of special salience to policymakers;

(3) Recommendations and examples of the format to be used to report assessment and background data in geography;

(4) A final report describing the consensus process.

A record of all Council proceedings will be kept at the Council of Chief State School Officers until July 1993 and at the National Assessment Governing Board following that date, and will be available for public inspection.

Dated: September 27, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91–23832 Filed 10–2–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC);

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before November 4, 1991. If you

anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Office, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–549.
3. 1902–0086.
4. Gas Pipeline Rates: NGPA Title III Transactions.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 294 respondents.
10. 27.38 responses.
11. 2.70 hours per response.
12. 21,735 hours.
13. FERC–549 is required to carry out sections 311 and 312 of title III of the Natural Gas Policy Act of 1978. The data are used to ensure that just and reasonable or fair and equitable rates are charged and to monitor and evaluate the transactions.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, September 26, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–23836 Filed 10–2–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 10674–002 Wisconsin]

Midtec Paper Corporation; Availability of Environmental Assessment

September 26, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the existing Midtec Hydroelectric Project, located on the Fox River in Outagamie County, Wisconsin and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23764 Filed 10–2–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–3182–000, et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co., et al.

September 25, 1991.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket Nos. CP91–3182–000, CP91–3183–000, CP91–3184–000, CP91–3185–000]

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251–1478, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up, date
CP91–3182–000 (9–23–91)	O&R Energy, Inc. (Marketer).	31,440 31,440 11,475,600	Various	Various	8–20–91, ITS, Interruptible.	ST91–10376, 8–26–91.
CP91–3183–000 (9–23–91)	O&R Energy, Inc. (Marketer).	20,960 20,960 7,650,400	Various	MS, LA	4–12–91, ITS, Interruptible.	ST91–10311, 8–27–91.
CP91–3184–000 (9–23–91)	Rally Pipeline Corporation (Intrastate Pipeline).	59,736 59,736 21,803,640	Various	Various	7–31–87, ITS, Interruptible.	ST91–10310, 8–27–91.
CP91–3185–000 (9–23–91)	MidCon Marketing Corporation (Marketer).	733,600 733,600 267,764,000	Various	Various	4–30–86, ITS, Interruptible.	ST91–10372, 9–3–91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

2. Transcontinental Gas Pipe Line Corp.

[Docket Nos. CP91-3571-000, CP91-3176-000, CP91-3177-000]

Take notice that on September 20, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Transco and is summarized in the attached appendix.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3175-000 (9-20-91)	Chevron U.S.A., Inc. (Producer).	1,700,000 1,700,000 620,500,000	Various	LA, TX	8-8-91, IT, Interruptible.	ST91-10269-000, 8-1-91.
CP91-3176-000 (9-20-91)	Enmark Gas Corp. (Intrastate Pipe Line).	150,000 15,000 5,475,000	Various	LA, TX	7-15-91, IT, Interruptible.	ST91-10285-000, 8-1-91.
CP91-3177-000 (9-20-91)	Enron Gas Marketing Inc. (Marketer).	100,000 5,000 182,500,000	Various	LA, TX	6-28-91, IT, Interruptible.	ST91-10272-000, 8-1-91

3. Colorado Interstate Gas Co.; Tennessee Gas Pipeline Co.; Florida Gas Transmission Co.; Tennessee Gas Pipeline Co.

[Docket Nos. CP91-3150-000, CP91-3161-000, CP91-3162-000, CP91-3163-000, CP91-3178-000]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual (dt equivalent)	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up-date
CP91-3150-000 (9-19-91)	Windsor Gas Processing, Inc. (Marketer).	[2] 4,000 4,000 1,460,000	TX, OK, CO, KS, WY	CO	7-1-91, TI-1, Interruptible.	ST91-9873, 7-1-91.
CP91-3161-000 (9-20-91)	Stellar Gas Company (Marketer).	10,000 10,000 3,650,000	TX, LA, OTX, OLA, MS, AL.	Various	1-22-88, IT, Interruptible.	ST-91-10383, 8-14-91.
CP91-3162-000 (9-20-91)	The City of Tallahassee (Shipper).	([3])	TX, LA, OTX, OLA, MS, AL, FL.	FL	11-1-89, PTS-1, Interruptible.	ST91-9967, 7-16-91.
CP91-3163-000, ST91-10241 (9-20-91)	The City of Homestead (Shipper).	([4])	TX, LA, OTX, OLA, MS, AL, FL.	FL	11-1-89, PTS-1, Interruptible.	8-1-91.
CP91-3178-000 (9-23-91)	Shell Gas Trading Company (Producer).	10,000 10,000 3,650,000	TX, LA, OTX, OLA	LA, TX, AL, MS, WV, KY.	1-16-89, IT, Interruptible.	ST91-9920, 7-10-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Measured in Mcf.

	MMBtu equivalent	
	Phase I	Phase II
Peak Day	5,853	4,253
Average Day	4,390	3,190
Annual	2,136,343	1,552,167

	MMBtu equivalent	
	Phase I	Phase II
Peak Day	1,042	936
Average Day	782	702
Annual	380,167	341,552

Applicant's address	Blanket docket
Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944.	CP86-589, et al.
Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	CP89-555-000.
Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.	CP87-115-000.

4. Pacific Gas Transmission Co.

[Docket No. CP91-3191-000]

Take notice that on September 24, 1991, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP91-3191-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Northern California Power Agency under the blanket certificate issued in Docket No. CP90-1091-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

PGT states that, pursuant to an agreement dated April 8, 1991, under its Rate Schedule ITS-1, it proposes to transport up to 41,000 MMbtu per day equivalent of natural gas. PGT indicates that it would transport 15,000 MMbtu on an average day and 10,950,000 MMbtu annually. PGT further indicates that the gas would be transported from British Columbia, and would be redelivered in Oregon.

PGT advises that service under § 284.223(a) commenced July 15, 1991, as reported in Docket No. ST91-10234-000.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corp.

[Docket No. CP91-3164-000]

Take notice that on September 20, 1991, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158-0900, filed in Docket No. CP91-3164-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new meter station under its blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that Portland General Electric Company (Portland) has requested and Northwest has agreed to construct a new meter station to deliver up to 8,000 Mcf per hour of natural gas to a new pipeline proposed by Portland and KB Pipeline Company (KB). Northwest indicates that the proposed new pipeline would allow Portland's Beaver electrical generating facility to operate at a greater capacity and would provide Portland access to gas supplies for future expansion of its Beaver generating facility.

Northwest states that the meter station will be located at milepost 1266 on Northwest's mainline in Cowlitz County, Washington on a 70 foot by 230 foot site which will be owned by Portland and KB. Northwest indicates that the estimated cost of the meter station is $1,332,640. Northwest further states that because the incremental annual revenues to be generated by the service to this meter station will exceed the estimated incremental cost-of-service for the proposed facilities, Northwest will install the delivery meter at its own expense.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-3157-000]

Take notice that on September 20, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed a request with the Commission in Docket No. CP91-3157-000 pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to provide an interruptible transportation service for North American Resources Company (North American), a producer, under the blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Panhandle states that it proposes to transport up to 20,000 dekatherms of natural gas on peak and average days and 7,300,000 dekatherms annually pursuant to a July 24, 1991, transportation agreement under its FERC Rate Schedule PT. Panhandle indicates that it would receive the gas in Colorado and would deliver the gas to North American at the existing Krauthead redelivery point in Adams County, Colorado. Panhandle also indicates that service under § 284.223(a) commenced August 1, 1991, as reported in Docket No. ST91-10162.

Panhandle also proposes to add the Krauthead redelivery point, originally constructed under section 311 of the Natural Gas Policy Act, as a jurisdictional facility under its blanket certificate issued in Docket No. CP83-83-000 pursuant to Section 7 of the NGA.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. ANR Pipeline Co.; Colorado Interstate Gas Co.

[Docket Nos. CP91-3179-000, CP91-3180-000, CP91-3181-000]

Take notice that ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, and Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-532-000 and Docket No. CP86-589, *et al.*, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by

[4] These prior notice requests are not consolidated.

Applicants and is summarized in the attached appendix.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start-up date
CP91-3179-000 (9-23-91)	Hadson Gas Systems, Inc. (marketer).	100,000 100,000 36,500,000 (Dth)	LA, OK, KS, TX, OLA, OTX.	LA	1-14-91, ITS, Interruptible.	ST91-10203 8-7-91
CP91-3180-000 (9-23-91)	NML Development Corp. (marketer).	150,000 150,000 54,750,000 (Dth)	OLA, OTX	LA	2-10-89, ITS, Interruptible.	ST91-10200, 8-6-91
CP91-3181-000 (9-23-91)	Western Natural Gas & Transmission Corp. (marketer).	1,000 1,000 356,000 (Mcf)	CO, WY, UT, OK, TX, KS.	CO	7-1-91, TI-1, Interruptible.	ST91-10092 8-1-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

8. Columbia Gulf Transmission Co.

[Docket Nos. CP91-3153-000, CP91-3154-000, CP91-3155-000, CP91-3156-000]

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3153-000 (09-20-91)	Louis Dreyfus Energy Corporation (marketer).	100,000 80,000 36,500,000	LA	LA, TX	12-12-89, ITS, Interruptible.	ST91-10104-000 08-14-91
CP91-3154-000 (09-20-91)	The Polaris Pipeline Corporation (marketer).	100,000 80,000 29,200,000	LA	LA, TX, MS, TN	04-04-89, ITS, Interruptible.	ST91-10101-000 08-17-91
CP91-3155-000 (09-20-91)	Panhandle Trading Company (marketer).	150,000 120,000 54,750,000	LA	LA, TX, MS, TN	08-23-88, ITS, Interruptible.	ST91-10217-000 08-15-91
CP91-3156-000 (09-20-91)	Hadson Gas Systems, Inc. (marketer).	121,500 97,200 44,347,500	LA	LA	04-01-87, ITS, Interruptible.	ST91-10218-000 08-10-91

[1] Offshore Louisiana and onshore Louisiana are shown as LA.

9. BHP Petroleum Co. Inc., et al.

[Docket Nos. CI91-124-000, et al.[6]]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Comment date: October 15, 1991, in accordance with Standard Paragraph J at the end of this notice.

[6] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI91-124-000 (CI78-338) D 9-3-91	BHP Petroleum Company Inc., 5847 San Felipe, Suite 3600, Houston, Texas 77057.	Northern Natural Gas Company, State "XXX" Com. 1, North Vacuum Field, Lea County, New Mexico.	Acreage assigned 12-1-90 to Geodyne Nominee Corporation.
CI91-125-000 (CI73-88) D 9-3-91	BHP Petroleum (Americas) Inc., 5847 San Felipe, Suite 3600, Houston, Texas 77057.	Questar Pipeline Company, Trail Unit, Trail Unit Area, Sweetwater County, Wyoming.	Acreage assigned 12-1-90 to Geodyne Nominee Corporation.

Filling Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

10. Natural Gas Pipeline Co. of America; Superior Offshore Pipeline Co.

[Docket Nos. CP91-3140-000 [7], CP91-3141-000, CP91-3142-000, CP91-3145-000, CP91-3146-000, CP91-3147-000]

Take notice that on September 19, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg., annual	Points of [2]		Start up date, rate schedule	Related dockets [3]
				Receipt	Delivery		
CP91-3140-000 (9-19-91)	Natural Gas Pipeline Company of America, 701 East 22nd St., Lombard, IL 60148.	Tenaska Marketing Ventures.	250,000 45,000 16,425,000	AR, CO, IL, IA, KS, LA, MO, NE, NM, OK, TX, OLA, OTX.	AR, CO, IA, IL, KS, LA, MO, NE, NM, OK, TX, OLA, OTX.	8-1-91, ITS	CP86-582-000 ST91-10155-000
CP91-3141-000 (9-19-91)	Natural Gas Pipeline Company of America.	Anthem Energy Company.	20,000 5,000 1,825,000	AR, CO, IL, IA, KS, LA, MO, NE, NM, OK, TX, OLA, OTX.	CO, IA, IL, LA, NM, OK, TX, OLA, OTX.	7-12-91, ITS	CP86-582-000 ST91-9936-000
CP91-3142-000 (9-19-91)	Natural Gas Pipeline Company of America.	Caterpillar, Inc.	8,000 8,000 2,920,000	IL, LA, TX	IL, TX	8-1-91, FTS	CP86-582-000 ST91-10078-000
CP91-3145-000 (9-91-91)	Superior Offshore Pipeline Company, 12450 Greenspoint Dr., Houston, TX 77060.	Norcen Explorer, Inc.	10,000 10,000 3,650,000	LA	LA	8-7-91, T-1	CP86-387-000 ST91-10223-000
CP91-3146-000 (9-91-91)	Superior Offshore Pipeline Company.	Norcen Explorer, Inc.	11,150 11,150 4,069,750	OLA	LA	8-7-91, T-1	CP86-387-000 ST91-10222-000
CP91-3147-000 (9-91-91)	Superior Offshore Pipeline Company.	Samedan Oil Company.	28,000 28,000 10,220,000	LA	LA	8-1-91, T-1	CP86-387-000 ST91-10224-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

11. South Georgia Natural Gas

[Docket Nos. CP91-3088-000, CP91-3089-000]

Take notice that on September 13, 1991, South Georgia Natural Gas Company (South Georgia), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket Nos. CP91-3088-000 and CP91-3089-000 applications with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon its interruptible transportation of natural gas for direct sales to Georgia-Pacific Corporation (Georgia-Pacific) and Florida Power corporation (Florida Power), respectively, all as more fully described in the applications which are open to public inspection.[8]

South Georgia requests permission and approval in Docket No. CP91-3088-000 to abandon its interruptible transportation of natural gas for direct sales of up to 3,545 Mcf per day to Georgia-Pacific's plant near cedar Springs, Georgia.[9] Georgia-Pacific has purchased virtually all of its natural gas from third-parties and transported it on South Georgia's system since 1988. Following cancellation of their direct sales agreement on December 31, 1990, Georgia-Pacific and South Georgia entered into a firm transportation service agreement on July 23, 1991. South Georgia, therefore, requests authority to abandon its interruptible transportation service for Georgia-Pacific, effective July 23, 1991, the date that firm transportation service first became available to Georgia-Pacific.

South Georgia also requests permission and approval in Docket No. CP91-3089-000 to abandon its interruptible transportation of natural gas for direct sales of up to 17,722 Mcf per day to Florida Power's electric generating plant near Live Oak, Florida.[10] Florida Power has purchased virtually all of its natural gas from third-parties and transported it on South Georgia's system since 1988. Following cancellation of their direct sales agreement on January 1, 1991, Florida Power has continued to receive interruptible transportation service

[8] These dockets are not consolidated.

[9] The Commission order issued June 3, 1965, in Docket No. CP65-224 (33 FPC 1209) authorized South Georgia's service for George-Pacific.

[10] The Commission order issued August 3, 1954, in Docket No. G-1915 (13 FPC 666) authorized South Georgia's service for Florida Power.

pursuant to open-access transportation agreements with South Georgia.

South Georgia also states that it does not propose to abandon any facilities in either Docket No. CP91-3088-000 or Docket No. CP91-3089-000.

Comment date: October 16, 1991, in accordance with Standard Paragraph F at the end of this notice.

12. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP91-3143-000]

Take notice that on September 19, 1991, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed a prior notice request with the Commission in Docket No. CP91-3143-000 pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-820-000 and to add three delivery points under its blanklet certificate issued in Docket Nos. CP82-384-000 and CP82-384-001, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

AER has provided information applicable to each transaction, including the shipper's identity; the type of transportaion service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initiation date, and related ST docket number of the 120-day transaction under § 284.223 of the commission's Regulations, as summarized in the appendix.

AER also proposes to add its existing interconnections with Valero Transmission Company (Panola County, Texas); Enogex, Inc. (McCalain county, Oklahoma); and Transok, Inc. (Hughes County, Oklahoma), all constructed under Section 311 of the Natural Gas Policy Act, as jurisdictional facilities under its blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the NGA.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

Shipper (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
Arkla Energy Marketing (marketer)	450 450 164,250	AR, LA, OK, TX	IL, MO	4-1-91, FT, Firm	ST91-8785 4-1-91
VHC Gas Systems, L.P. (marketer)	200,000 200,000 58,400,000	AR, OK	TX	5-1-91, IT, Interruptible.	ST91-8966 5-1-91
Seagull Gas Marketing (marketer)	15,000 15,000 4,380,000	AR, OK	AR, MO, OK, TX	3-1-89; amended 1-25-90, IT, Interruptible.	ST91-9145 6-21-91
Cibola Corporation (marketer)	100,000 80,000 29,200,000	OK	IA	6-14-91, IT, Interruptible.	ST91-9765 7-1-91
Arkla Energy Marketing (marketer)	100,000 80,000 29,200,000	AR, LA, OK, TX	NJ, NY, OH, PA	1-1-91, IT, Interruptible.	ST91-9818 7-8-91
Vesta Energy Company (marketer)	50,000 40,000 14,600,000	AR, LA, OK, TX	IL	6-1-91, IT, Interruptible.	ST91-9819 7-1-91
Boyd Rosene & Associates (marketer)	30,000 24,000 8,760,000	AR, OK	TX	2-1-91, IT, Interruptible.	ST91-10,156 6-28-91
Arkla Energy Marketing (marketer)	356 356 129,940	AR, LA, OK	AR	8-1-91, FT, Firm	ST91-10,157 8-1-91
Trans Arkoma Gas Corp. (marketer)	20,000 16,000 5,840,000	AR, OK	DE, IL, In, Ky, MI, MN, NJ, NY, OH, PA, TN, WV.	2-1-91, IT, Interruptible.	ST91-10,158 8-1-91

13. South Georgia Natural Gas Co.; Southern Natural Gas Co.

[Docket Nos. CP91-3186-000, CP91-3187-000]

Take notice that on September 23, 1991, South Georgia Natural Gas Company (South Georgia), 1217 Old Albany Road, Thomasville, Georgia 31792, and Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of Georgia-Pacific Corporation (Georgia-Pacific), an end-user, under the blanket certificates issued in Docket No. CP90-2125-000 and Docket No. CP88-316-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[1]

South Georgia and Southern have provided information applicable to each transaction for Georgia-Pacific, including the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initiation date; and related ST docket number of the 120-day transaction under § 284.223 of the Commission's Regulations, as summarized in the appendix.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No.	Peak day, average day, annual Mcf	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3186-000	560 560 204,400	AL	GA	7-32-91, FT, Firm	ST91-9909 7-27-91
CP91-3187-000	563 563 205,495	AL, LA, OLA, MS, TX, OTX	AL	7-23-91, FT, Firm	ST91-9908 7-27-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

14. Williston Basin Interstate Pipeline Co.

[Docket No. CP91-3169-000]

Take notice that on September 20, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91-3169-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon two sales taps and appurtenant facilities located in Park County, Wyoming, under the certificate issued in Docket No. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Montana-Dakota Utilities Co. (Montana-Dakota) has advised Williston Basin that it no longer requires service through the above-mentioned sales taps located in Park County, Wyoming, because its end-use customers will now receive service through extensions of Montana-Dakota's distribution lines. It is further stated that the proposed abandonment will not affect Williston Basin's peak day or annual sales to Montana-Dakota.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23759 Filed 10-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TC91-13-000, TC91-17-000, TC91-11-001, TC91-12-000, TC91-21-000]

Arkla Energy Resources, Williams Natural Gas Co., Mississippi River Transmission Corp., Southern Natural Gas Co.; Tariff Sheet Filings

September 26, 1991.

Take notice that the following pipelines [1] have filed revised tariff sheets to become effective November 1, 1991, pursuant to § 281.204(b)(2) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

[1] Addresses of the pipelines are listed in the Appendix hereto.

Pipeline and docket No.	
(1) Williams Natural Gas Company, TC91-17-000, Filed: September 13, 1991	First Revised Sheet Nos. 265-269 of FERC Gas Tariff First Revised Volume No. 1.
(2) Arkla Energy Resources, TC91-13-000, Filed: September 16, 1991	First Revised Sheet No. 10 of FERC Gas Tariff, Second Revised Volume No. 1 DC-B-11
(3) Mississippi River Transmission Corporation, TC91-11-001, Filed: September 16. 1991.	Fourth Revised Sheet No. 32, Third Revised Sheet No. 92, Third Revised Sheet No. 93, Third Revised Sheet No. 95, Third Revised Sheet No. 96, Original Sheet No. 97, Original Sheet No. 98, Original Sheet No. 99, Original Sheet No. 100 of FERC Gas Tariff, Second Revised Volume No. 1.
(4) Columbia Gas Transmission Corporation, TC91-12-000, filed: September 13, 1991.	Second Revised Sheet No. 270, Second Revised Sheet No. 271, Second Revised Sheet No.272, Second Revised Sheet No.273, Second Revised Sheet No. 274, First Revised Sheet No. 275, Second Revised Sheet No. 276, Second Revised Sheet No. 277, Second Revised Sheet No. 278, Second Revised Sheet No. 279, Second Revised Sheet No. 280. Second Revised Sheet No. 281, Second Revised Sheet No. 282, Second Revised Sheet No. 283, Second Revised Sheet No. 284, Second Revised Sheet No. 285, Second Revised Sheet No. 286, Second Revised Sheet No. 287, Second Revised Sheet No. 288, Second Revised Sheet No. 289, Second Revised Sheet No. 290, Second Revised Sheet No. 291, Second Revised Sheet No. 292, Second Revised Sheet No. 293, Second Revised Sheet No. 294, Second Revised Sheet No. 295, Second Revised Sheet No. 296, Second Revised Sheet No. 297, Second Revised Sheet No. 298, Second Revised Sheet No. 299, Second Revised Sheet No. 300, Second Revised Sheet No. 301, Second Revised Sheet No. 302, Second Revised Sheet No. 303, Second Revised Sheet No. 304, Second Revised Sheet No. 305, First Revised sheet No. 306, Original Sheet No. 307, Original Sheet No. 308, Original Sheet No. 309, Original Sheet No. 310 of Ferc Gas Tariff, First Revised Volume No. 1.
(5) Southern Natural Gas Company, TC01-21-000, Filed: September 16, 1991	Fifteenth Revised Sheet No. 61, First Revised Sheet No. 61A.01, Fourteenth Revised Sheet No. 62, First Revised Sheet No. 62.01, Sixth Revised Sheet No. 62A, First Revised Sheet No. 62A.01, Seventeenth Revised Sheet No. 63, First Revised Sheet No. 63.01, Ninth Revised Sheet No. 63A, First Revised Sheet No. 63A.01, Sixteenth Revised Sheet No. 64, First Revised Sheet No. 64.01, Eighth Revised Sheet No. 64A.01, First Revised Sheet No. 64A.01, Seventeenth Revised Sheet No. 66, First Revised Sheet No. 66.01, First Revised Sheet No. 66A.01, Eighteenth Revised Sheet No. 67, Tenth Revised Sheet No. 67A, Eighth Revised Sheet No. 68, First Revised Sheet No. 68.01, First Revised Sheet No. 68A.01, Tenth Revised Sheet No. 69, Tenth Revised Sheet No. 70, First Revised Sheet No. 70.01, First Revised Sheet No. 70A.01, Seventeenth Revised Sheet No. 71, Ninth Revised Sheet No. 71A, Fourteenth Revised Sheet No. 72, First Revised Sheet No. 72.01, First Revised Sheet No. 72A.01, Thirteenth Revised Sheet No. 73, First Second Revised Sheet No. 73.01, Sixth Revised Sheet No. 73A, First Revised Sheet No. 73A.01, Sixteenth Revised Sheet No. 74, First Revised Sheet No. 74.01, Ninth Revised Sheet No. 74A, First Revised Sheet No. 74A.01, Fifteenth Revised Sheet No. 75, First Revised Sheet No. 75.01, Eighth Revised Sheet No. 75A, First Revised Sheet No. 75A.01, Eighteenth Revised Sheet No. 77, First Revised Sheet No. 77.01, First Revised Sheet No. 77A.01, Eighteenth Revised Sheet No. 78, Tenth Revised Sheet No. 78A, Eighth Revised Sheet No. 79, First Revised Sheet No. 79.01, First Revised Sheet No. 79A.01, Tenth Revised Sheet No. 80, Tenth Revised Sheet No. 81, First Revised Sheet No. 81.01, First Revised Sheet No. 81A.01, Seventeenth Revised Sheet No. 82, Seventeenth Revised Sheet No. 82A.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 7, 1991, file with the Federal Energy Regulatory Commission, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

Appendix

Arkla Energy Resources, P.O. Box 21734, Shreveport, Louisiana 71151.

Mississippi River Transmission Corp., 9900 Clayton Road, St. Louis, Missouri 63124.

Williams Natural Gas company, P.O. Box 3288, Tulsa, Oklahoma 74101.

Columbia Gas Transmission Corporation, 1700 MacCorkle Ave. SE., P.O. Box 1273, Charleston, West Virginia 25325-1273.

Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202-2563.

[FR Doc. 91-23763 Filed 10-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC91-14-000]

Southern Natural Gas Co.; Petition for Waiver

September 26, 1991.

Take notice that on September 16, 1991, Southern Natural Gas Company, (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, tendered for filing a Petition For Waiver of certain provisions of the Stipulation and Agreement dated December 30, 1981 in Docket No. TC81-64-000.

By order dated March 18, 1982, the Commission approved the aforementioned Stipulation and Agreement, which established the procedures to be followed in updating the Priority 2.1 Essential Agricultural Use (EAU) requirements of Southern's resale and direct sale customers. One provision of the Stipulation and

Agreement requires Southern to resurvey triennially its customers' EAU requirements in order to update its Index of Requirements to reflect any changes in their EAU requirements. A triennial survey is due to be conducted this year.

Southern submits that there is good cause to waive the triennial survey requirement for 1991 based on the fact that it filed on September 19, 1991 in Docket No. TC91–18–000 a completely revised Index of Requirements, pursuant to a Commission Order,[1] which includes updates to the EAU requirements. Suthern states that it also gave its customers the opportunity to submit voluntary EAU updates which Southern included in the Index filed on September 19, 1991. Southern states that its customers advised it that they supported a waiver of the triennial review in light of the update being filed to the entire Index of Requirements, including all EAU requirements.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or a Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such Motions or Protests should be filed on or before October 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23760 Filed 10–2–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC91–18–000]

Southern Natural Gas Co.; Correction to Proposed Changes to FERC Gas Tariff

September 26, 1991.

In the Notice of Proposed Changes To FERC Gas Tariff issued on September 19, 1991, in Docket No. RP91–221–000, the caption reflected an incorrect docket number "RP91–221–000". The correct docket number should be Docket No. TC91–18–000. The docket number referenced above reflects the correct, current docket number for the proceeding.

Further, the filing date shown on page one, line one "September 15, 1991", was incorrect and should have been listed as September 19, 1991.

Additionally, the closing date for all comments on or protests to said filing shown on page three, paragraph three, as "September 26, 1991", has been extended to October 3, 1991.

Lois D. Cashell.

Secretary.

[FR Doc. 91–23762 Filed 10–2–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC91–15–000]

South Georgia Natural Gas Co.; Petition for Waiver

September 26, 1991.

Take notice that on September 16, 1991, South Georgia Natural Gas Company, (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202–2563, tendered for filing a Petition For Waiver of certain provisions of the Stipulation and Agreement dated December 30, 1981 in Docket No. TC81–63–000.

By order dated March 18, 1982, the Commission approved the aforementioned Stipulation and Agreement, which established the procedures to be followed in updating the Priority 2.1 Essential Agricultural Use (EAU) requirements of South Georgia's resale and direct sale customers. One provision of the Stipulation and Agreement requires South Georgia to resurvey triennially its customers' EAU requirements in order to update its Index of Requirements to reflect any changes in their EAU requirements. A triennial survey is due to be conducted this year.

South Georgia submits that there is good cause to waive the triennial survey requirement for 1991 based on the fact that it is currently in the process of revising its Index of Requirements in its entirety which includes updates to the EAU requirements. South Georgia states that it also gave its customers the opportunity to submit voluntary EAU updates but all of the customers waived the opportunity to update their EAU requirements. South Georgia indicates that its' customers advised it that they supported a waiver of the triennial review in light of the ongoing update to the entire Index of Requirements and the submission of revised EAU requirements only two years ago.[1]

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or a Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such Motions or Protests should be filed on or before October 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23761 Filed 10–2–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–93–007]

Williams Natural Gas Co.; Order on Remand Requesting Briefs From Parties and Interested Persons

Issued September 26, 1991.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

This case involves the competition between an interstate pipeline company and a local distribution company for the right to transport natural gas to a newly constructed cogeneration plant—a competition won by the pipeline. The proceeding has been remanded for the second time, on the same jurisdictional issue, by the United States Court of Appeals for the District of Columbia Circuit.[1] The local distribution company, Oklahoma Natural Gas Company (ONG), contends that the Commission lacks jurisdiction over the 12.4–mile lateral pipeline which the interstate pipeline, Williams Natural Gas Company (Williams), constructed and now operates pursuant to a Commission certificate to serve the cogeneration plant, PowerSmith Cogeneration Project Limited Partnership (PowerSmith).

The Commission considers this jurisdictional question to be an important issue raising important implications for the Commission's mandate under both the Natural Gas Act (NGA) and the Natural Gas Policy Act (NGPA) and its open access program. Since the explanation which

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[1] Docket No. RP88–17–012 at 44 FERC ¶ 61,147.

[1] Docket No. TC89–12–000 filed September 15, 1989, letter order issued November 1, 1989.

[1] *Oklahoma Natural Gas Company* v. *FERC*, (Case No. 90–1603, D.C. Cir., August 2, 1991).

the Commission has provided in response to the first court remand [2] was again found to be inadequate by the court, the Commission is inviting the parties as well as all interested persons who believe they might be affected by the jurisdictional implications of this case to file briefs and/or to intervene in this proceeding. Persons that could be affected by the decision to be rendered by the Commission on the recent remand are invited to intervene in the proceeding at this time. All interventions which are received within thirty days of the issuance of this order will be treated as timely. Upon consideration of the briefs and the reply briefs, the Commission will issue a subsequent order on the. merits in response to the pending court remand.

I. Procedural History

Williams operates a 16–inch certificated interstate pipeline called the "Cement Pipeline" which takes gas from producers in western Oklahoma and transports it in interstate commerce. PowerSmith is a newly constructed cogeneration plant in Oklahoma City, approximately 12 miles away from the Cement Pipeline. Ladd Gas Marketing, Inc. (Ladd) has agreed to sell PowerSmith all its gas requirements for fifteen years, and Ladd, PowerSmith and Williams have entered into a transportation agreement whereby Williams will deliver gas from its Cement Pipeline to PowerSmith—which requires the construction of a 12.4 mile lateral pipeline, the certification of which is the subject of this proceeding. Ladd will compensate Williams by delivering gas to its pipeline at a number of designated receipt points downstream of the new lateral, including locations in Kansas and Wyoming. Thus, the transportation will be accomplished by means of a backhaul arrangement in which Williams will be compensated for delivering gas to PowerSmith in Oklahoma by Ladd's delivery of gas to Williams in Oklahoma, Kansas and Wyoming. The gas delivered to PowerSmith in Oklahoma was produced in that state.

A. Initial FERC Certificate Proceeding

On October 28, 1988, Williams filed an application for a certificate of public convenience and necessity, requesting authorization to construct and operate the proposed 12.4 mile lateral. On February 16, 1989, the Commission issued a certificate [3] to Williams and denied ONG's request for a hearing. Williams accepted the certificate. ONG filed a motion for stay and a separate request for rehearing. Williams filed a request for rehearing.

On March 31, 1989, the Commission issued an order denying the motion for stay and tolling the request for rehearing.[4]

On May 31, 1989, the Commission issued an order denying rehearing and clarifying its prior order.[5]

On December 12, 1989, the Commission's Director of the Office of Pipeline and Producer Regulation issued a letter order accepting Williams' tariff filing to be effective October 1, 1989.[6] On August 18, 1990, the facilities were placed into operation.

B. Concurrent State Proceeding

On October 18, 1988, ten days before Williams filed its certificate application, ONG filed a declaratory judgment action in District Court for Oklahoma County, Oklahoma (referred to as state court), asserting that its franchise to sell, transport and distribute natural gas to the general public in Oklahoma City gives it the sole right to use city streets,[7] to the exclusion of a nonfranchised transporter such as Williams.

On February 16, 1989, the same day Williams' certificate was granted, the Oklahoma state court ruled in ONG's favor. The state court held that, under Oklahoma law, ONG's franchise insulates it from competition in Oklahoma City. The state court specifically reserved for a later time the issue of whether federal law preempts Oklahoma law and, thus, whether the FERC certificate negates the Oklahoma franchise requirement.

On March 28, 1989, Williams brought an action to enforce its certificate in the U.S. District Court for the Western District of Oklahoma (referred to as federal district court) pursuant to § 7(h) of the NGA. Williams sought to condemn rights of way across city streets to construct and operate the lateral pipeline and to quiet Williams' title to those rights of way as against ONG's franchise rights. On April 18, 1989, the federal district court authorized Williams to condemn city rights of way "for the purpose of laying a pipeline" pursuant to the certificate. However, the court's order made no mention of Williams' ability to "operate" the pipeline.

In response, ONG sougnt and obtained from the state court a temporary restraining order (TRO) enjoining Williams from constructing the pipeline across city streets. On May 1, 1989, the federal district court enjoined enforcement of the state TRO, finding that it interfered with its jurisdiction and order permitting construction. However, the federal district court declined to enjoin the state court's consideration of the preemption issue.

On May 11, 1989, Williams and PowerSmith requested the federal district court to reconsider its decision and enjoin the state court's consideration of the preemption question. However, while this motion was pending, the state court decided the preemption issue, holding the certificate did not preempt the state franchise requirement. The state court thereby permanently enjoined the construction and operation of the pipeline, notwithstanding the Commission certificate.

On May 22, 1989, the federal district court issued an order granting condemnation rights to Williams "for the purpose of the construction, maintenance and operation" of the pipeline. The court then held a hearing to consider a further request by Williams and PowerSmith to construe federal condemnation rights under the NGA and to stay the enforcement of the state court order to the extent it interfered with the May 22 condemnation order.

On May 30, 1989, the federal district court refused to grant further injunctive relief. The federal district court concluded that the state court decision on preemption had effectively deprived the federal courts of authority to reverse or reconsider the preemption issue.[8]

On July 18, 1989, Williams and PowerSmith appealed the state court decision permanently enjoining construction and operation of the pipeline to the Oklahoma Supreme Court.[9] This appeal is currently pending.

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[2] *Oklahoma Natural Gas Company* v. *FERC*, 906 F.2d 708 (D.C. Cir. 1990).

[3] Williams Natural Gas Company, 46 FERC ¶ 61,160 (1989).

[4] Williams Natural Gas Company, 46 FERC ¶ 61,408 (1989).

[5] Williams Natural Gas Company, 47 FERC ¶ 61,308 (1989).

[6] Williams Natural Gas Company, Letter order, dated December 12, 1989.

[7] ONG has a city franchise which grants it the right to construct, operate and maintain facilities in the public streets and other public ways for its distribution purposes. Williams' pipeline construction would require access to and use of the streets of Oklahoma City.

[8] The federal district court believed itself bound by the doctrine of *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413, 415–16, to defer to the state court's decision, with appellate relief available to Williams only through the Oklahoma Supreme Court. However, the court certified the matter for immediate review to the U.S. Court of Appeals for the 10th Circuit under 28 U.S.C. 1292(b).

[9] *Smith Cogeneration, Inc.* v. *Oklahoma Natural Gas Co.*, Case No. 73649 (Okla. filed July 18, 1989).

C. Tenth Circuit Decision

Williams and PowerSmith also petitioned the U. S. Court of Appeals for the Tenth Circuit for review of the federal district court decision refusing to grant injunctive relief from the state court decision enjoining construction of the pipeline. The Tenth Circuit reversed, holding that upon the issuance of the certificate, the provisions of NGA section 19(a) and (b) provided the exclusive course for judicial review of the Commission's decision and barred collateral attack in either the state or federal district courts as to those issues that could have been raised in the FERC proceeding or appeal.[10]

ONG petitioned the U.S. Supreme Court for writ of certiorari to the Tenth Circuit decision, which petition the Court denied.[11]

On August 9, 1990, the United States District Court for the Western District of Oklahoma enjoined enforcement of the state court injunction.[12]

D. First D.C. Circuit Remand (ONG I)

ONG also petitioned the District of Columbia Circuit for review of the Commission orders issuing Williams a certificate. In ONG I the D.C. Circuit affirmed the Commission's ruling that the proposed "bypass" was in the public interest, held that Williams' Cement Pipeline was part of an integrated interstate pipeline system rather than a gathering facility, and ruled that the 12.4-mile pipeline was not exempt from Commission jurisdiction as a gathering facility. However, it found that the Commission had not sufficiently explained the basis for its exercise of jurisdiction over the proposed facilities on the basis that they were in interstate commerce, and therefore remanded the case to the Commission for further explanation.

On September 19, 1990, the Commission affirmed its prior determination that the proposed services and facilities were subject to the Commission's jurisdiction.[13] First, the Commission explained that the economic effect of the backhaul was that a specific amount of gas would enter Williams' system in Kansas and Wyoming and that same amount of gas would leave Williams' system in Oklahoma, for delivery to PowerSmith. The Commission cited *United Gas Improvement Co.* v. *Continental Oil Co.*[14] wherein the Supreme Court held that the mere change in form of a transaction does not oust the Commission of jurisdiction where the determinative economic fact establishes that jurisdiction. The Commission explained that transportation by backhaul is equivalent to any other form of transportation since gas is received at one point on the system and delivered to another point on the system. The end-user is indifferent as to whether the gas is delivered to it by front haul or backhaul.[15]

Second, the Commission explained that since the Cement Pipeline is a jurisdictional facility, it follows under *F.P.C.* v. *East Ohio Gas Co.*[16] and *California* v. *F.E.R.C.*[17] that the entire transaction is within the Commission's transportation jurisdiction.

Third, the Commission explained that the rationale articulated by the court in *California* v. *Lo-Vaca Gathering Co.*[18] applied because the gas received by Williams for PowerSmith will be commingled with other gas in Williams' Cement Pipeline. Consequently, some of the gas will be transported out-of-state. The Commission explained that under *Lo-Vaca*, these circumstances make the entire transaction subject to the Commission's jurisdiction.[19] ONG sought rehearing, which the Commission denied.[20]

II. Current D.C. Circuit Remand (ONG II)

On August 2, 1991, the U.S. Court of Appeals for the District of Columbia Circuit again remanded the case to the Commission for a further explanation of the basis of the Commission's jurisdiction over the proposed transaction.[21]

The court noted that the Commission relied on *United Gas* for support of its position that the underlying economic facts of the backhaul transaction should determine its jurisdiction. The court further noted that *United Gas* concerned a "sale for resale", rather than a backhaul. The court stated that the concept of sale seems more amenable to an "economic" interpretation than does "transportation", which appears most naturally to refer to the actual physical movement of gas. The court also stated that the Commission relied on its own regulation that defines a backhaul as transportation,[22] rather than relying on the statute or the legislative history.[23] In a footnote,[24] the court stated that it previously has noted that a backhaul is treated as transportation under the Commission's regulations, but that the court has expressed no views as to the Commission's power to use that definition to expand its jurisdiction. Finally, the court stated that "the Commission must provide (the court) with more (explanation) to gain acceptance of its definition (that interstate transportation includes backhauls)."[25]

As to the Commission's contention that the rationale in *East Ohio* and *California* v. *F.E.R.C.* applied here, the court stated that in those cases the issue presented was the application of an exception to the Commission's jurisdiction over interstate transportation because the subject lines were alleged to be used for local distribution facilities. The court further stated that the exception for local distribution facilities assumes that there is interstate gas in the pipelines; otherwise the Commission would have no jurisdiction to begin with, and there would be no need for an exception. In the context of defining the term "local distribution facility", the court held the high pressure nature of a pipeline is clearly relevant, but it was not apparent why that should be so when the question is whether the gas is transported in interstate commerce at all.

The court also was not persuaded that the commingling theory which the Supreme Court used to support federal jurisdiction in *Lo-Vaca* was applicable here. Similarly, the court was not persuaded by the Commission's counsel's argument that the facts of *Louisiana Power & Light Co.* v. *F.P.C.*[26] are almost indistinguishable from this case. In *Louisiana Power* the gas company injected some of its gas from the interstate system into an intrastate system, thereby creating federal

[10] *Williams Natural Gas Company* v. *The City of Oklahoma City*, 890 F.2d 255, 266 (10th Cir. 1989).

[11] *Oklahoma Natural Gas Company* v. *Williams Natural Gas Company, cert. denied*, 110 S.Ct. 3236 (1990).

[12] Order of the District Court for the Western District of Oklahoma, issued August 9, 1990, in *Williams Natural Gas Co.* v. *City of Oklahoma*, No. CIV–89–519–A, enjoining enforcement of state court injunction. J.A. 613–15.

[13] Williams Natural Gas Company, 52 FERC ¶ 61,294 (1990).

[14] *United Gas Improvement Co.* v. *Continental Oil Co., et al.*, 381 U.S. 392, 399–402 (1965).

[15] 52 FERC at 62,157 (1990).

[16] *Federal Power Commission* v. *East Ohio Gas Co. et al.*, 338 U.S. 464 (1950).

[17] *Public Utilities Commission of the State of California et al.* v. *F.E.R.C.*, 900 F.2d 269 (D.C. Cir. 1990).

[18] *California et al.* v. *Lo-Vaca Gathering Co., et al.*, 379 U.S. 366 (1965).

[19] 52 FERC at 62,158 (1990).

[20] Williams Natural Gas Company, 53 FERC ¶ 61,399 (1990).

[21] *Oklahoma Natural Gas Company* v. *F.E.R.C.*, Case No. 90–1603 (D.C. Cir. 1991).

[22] See 18 C.F.R. § 284.1(a).

[23] *Supra*. n. 21 (slip opinion at page 5).

[24] *Id.*, (slip opinion at footnote 3).

[25] *Id.*, (slip opinion at page 5).

[26] *Louisiana Power & Light Co.* v. *F.P.C.*, 483 F.2d 623 (5th Cir. 1973), *cert. denied*, 416 U.S. 974 (1974).

jurisdiction over the latter.[27] Instead, the court stated the following:

In *Lo-Vaca* and *Louisiana Power* the consequences of commingling were different from those presented here. The legal and policy concerns in *Lo-Vaca* and *Louisiana Power* depended on the notion that gas was "dedicated to interstate commerce" whenever it was commingled in any fashion with jurisdictional gas. That concept, "dedicated to interstate commerce," partaking of both the "sale for resale" and "transportation" basis for jurisdiction, has, however, been undermined by changes in the industry caused by the massive deregulation of gas transportation pursuant to the Natural Gas Policy Act of 1978 and the Commission's promulgation of Orders Nos. 436 & 500.[28]

Finally, the court noted that the Commission had not sought deference for its interpretation of the statutory language under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*[29] The court stated that perhaps the Commission had not done so because the question whether deference is due an agency's interpretation of ambiguous language in a jurisdictional context is unsettled.[30] The court also noted that the Commission had not attempted to show how the statutory definition of transportation in interstate commerce is affected by the unbundling [31] of sales and transportation services pursuant to Orders Nos. 436 & 500.[32]

III. Request for Briefs

The Commission is requesting, but not requiring, that the parties and other interested persons file briefs on the issues listed below no later than 30 days from the issuance of this order. Reply briefs may be filed 45 days from the issuance of this order. Upon consideration of the briefs and the reply briefs, the Commission will issue a subsequent order on the merits in response to the pending court remand.

1. Does the NGA, the NGPA, the legislative history of either statute, and/or case law support the proposition that backhaul arrangements (and also exchanges and displacements) were intended by Congress to be included in the definition of interstate transportation? If so, please elaborate and provide citations and/or examples.

2. What additional theories support the proposition that, for jurisdictional purposes, the definition of interstate commerce should include backhauls, exchanges, and displacements? Please elaborate and provide citations and/or examples.

3. Is the court correct in stating (slip opin. at 5) that "(t)he concept of sale seems more amenable to an 'economic' interpretation than does 'transportation', which appears most naturally to refer to the actual physical movement of gas."

4. Approximately how much gas in total, or what percentage of gas, is transported by means of a backhaul, exchange, or displacement? Of this, how much is transported wherein the molecules of gas delivered to the end user do not cross state lines? Please explain the basis for your answer, and whether your answer refers to the industry as a whole or to your transactions specifically.

5. What would be the effect on the industry, interstate commerce, and open access transportation service if such transactions (*i.e.*, backhauls, exchanges, and displacements where the molecules of gas delivered to the end user do not cross state lines) were removed from the Commission's jurisdiction? Please elaborate and provide citations and/or examples.

6. What role, if any, should ownership of branch or lateral line play in determining whether the gas is "transported" interstate

7. What precedential support, if any, does the commingling doctrine set forth in *Lo-Vaca* provide for a finding of jurisdiction here?

8. Are the facts here indistinguishable from *Louisiana Power*? If yes, has the *Louisiana Power* decision "been undermined by changes in the industry caused by the massive deregulation of gas transportation pursuant to the NGPA and the Commission's promulgation of Orders Nos. 436 and 500."

In addition to the above, parties and interested persons may include in their briefs any other comments, citations, or examples which they believe are relevant to the court's remand. However, the Commission will disregard any comments or arguments which do not directly relate to the jurisdictional issue which is the subject of the court remand.

The Commission Orders

(A) Parties and interested persons are requested, but not required, to file briefs on the issues listed in the body of this order, as well as other comments which they believe are relevant, no later than 30 days from the issuance of this order. Parties and interested persons may file reply briefs 45 days from the issuance of this order. The Commission will disregard any comments or arguments which do not directly relate to the jurisdictional issue which is the subject of the court remand. Upon consideration of the briefs and the reply briefs, the Commission will issue a subsequent order on the merits in response to the pending court remand.

(B) Persons that could be affected by the precedence established in this proceeding, in view of the remand, are invited to intervene at this time. All interventions which are received within thirty days of the issuance of this order will be treated as timely.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23765 Filed 10–2–91; 8:45 am]

BILLING CODE 6717–01–M

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[27] *Id.* at 627–629.

[28] *Supra*, n. 21 (slip opinion at page 8).

[29] *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

[30] See, *e.g.*, *Business Roundtable* v. *S.E.C.*, 905 F.2d 406, 408 (D.C. Cir. 1990).

[31] Order Nos. 436 and 500 did not mandate the unbundling of sales and transportation service. Order Nos. 436 and 500 established a voluntary program of open access transportation. Although most pipelines now provide open access transportation, most of them continue to provide sales service as well. The court has used the word "unbundling" to represent the shift in the industry from a preponderance of sales service to a preponderance of transportation service. The Commission uses the word "unbundling" in a different context, as in the Notice of Proposed Rulemaking issued in Docket No. RM91–11–000. See In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Notice of Proposed Rulemaking, 56 FERC ¶ 61,178 (1991).

[32] *Supra*, n. 21 (slip opinion at footnote 5).

Office of Fossil Energy

[FE Docket No. 91–51–NG]

Fina Natural Gas Co.; Application To Import Natural Gas From and Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from and export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 22, 1991, of an application filed by Fina Natural Gas Company (Fina) for blanket authorization to import up to 100 Bcf of natural gas from Canada and Mexico and to export up to 100 Bcf of natural gas to Canada and Mexico. The application requests that the authorization be approved for a period of two years beginning on the date of the first delivery. Only existing U.S. pipeline facilities would be used to transport this gas and no new construction would be required.

The application is filed under section 3 of the Natural Gas Act and DOE

Delegation Order Nos 0204–111 and 0204–127. Protests, notions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, November 4, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

P. J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4819.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Fina is a Delaware corporation with its principal place of business in Dallas, Texas. It is an affiliate of Fina Oil and Chemical Company which owns substantial domestic natural gas reserves both onshore and on the Outer Continental Shelf. Fina markets gas produced by affiliated and nonaffiliated companies to local distribution companies and other users. According to the application, the authority requested by Fina contemplates the following types of import and export arrangements:

(1) Importation of supplies of Canadian and Mexican natural gas for consumption in U.S. markets;

(2) Importation of Canadian and Mexican natural gas for eventual return (via export) to Canadian and Mexican markets;

(3) Exportation of domestically produced natural gas for consumption in Canadian and Mexican markets; and

(4) Exportation of domestically produced gas for eventual return (via import) to U.S. markets.

Fina proposes to import and export this gas either for its own account or as agent on behalf of others. Although the identity of the parties are not known at this time, Fina states that the individual transactions would be conducted through arm's length bargaining and the price would be competitive in the marketplace. The gas to be exported is asserted to be incremental to the needs of current domestic purchasers in the area from which the supplies would come. If the application is granted, Fina agrees to comply with DOE's reporting requirements imposed in previous blanket authorizations.

The decision of Fina's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement would be in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests an additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Fina's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 26, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91–23834 Filed 10–2–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91-66-NG]

Sierra Pacific Power Co.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 19, 1991, of an application filed by Sierra Pacific Power Company (Sierra) for blanket authorization to import up to 60,000,000 dekatherms (one dekatherm equals about one Mcf) of Canadian natural gas at Sumas, Washington. Sierra requests that the authorization be approved for a period of two years beginning on the date of the first delivery after January 12, 1992, the date its existing blanket import authority issued in DOE/FE Opinion and Order No. 369 (1 FE ¶ 70,786) expires.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, November 4, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4819.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Sierra is a regulated public utility in the State of Nevada that distributes and sells natural gas in intrastate commerce. Sierra also produces and sells electricity at wholesale and retail. The gas proposed for import would be purchased from various Canadian suppliers for Sierra's local gas distribution operations and as a fuel for its powerplants. According to the application, the specific terms of each gas supply contract would be individually negotiated at arm's length and the price would be competitive in the marketplace. This gas would be transported from the international border on the existing pipeline system of Northwest Pipeline Corporation. No new pipeline construction would be needed.

If this application is approved, Sierra must file quarterly reports with FE detailing each import transaction. Sierra's reports during the past two years indicate that about 16,000,000 Mcf of gas was imported through June 1991 under its existing blanket authorization.

The decision of Sierra's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. Sierra asserts that the proposed imports would be competitive. Parties opposing the import arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Sierra's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 26, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91–23835 Filed 10–2–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of August 16 Through August 23, 1991

During the week of August 16 through August 23, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of

the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 27, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 16 through Aug. 23, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 21, 1991	Gulf/Carr Oil Co. #650, Gulf/Carr Oil Co. #668, Gulf/Carr Oil Co. #671, Gulf/Honey Dew Truck Stop #654-D Atlantic Beach, FL.	RR300-102, RR300-103, RR300-104, RR300-105,	Request for modification/rescission in the Gulf refund proceeding. *If Granted:* The October 16, 1990 Decision and Order (Case Nos. RF300-7256, RF300-7259, RF300-7261 and RF300-7258) issued to Carr Oil Co. #650, Carr Oil Co. #668, Carr Oil Co. #671 and Honey Dew Truck Stop ı654-D would be modified regarding the firms' applications for refund submitted in the Gulf refund proceeding.
Aug. 19, 1991	Gulf/Thomas' Gulf, Woodbridge, VA	RR300-101	Request for modification/rescission in the Gulf refund proceeding. *If Granted:* The June 26, 1991 Dismissal Letter (Case No. FR300-11018) issued to Thomas' Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Aug. 20, 1991	James L. Schwab, Spokane, WA	LFA-0142	Appeal of an information request. *If Granted:* The August 14, 1991 Freedom of Information Request Denial issued by the DOE Albuquerque Operations Office would be rescinded, and James L. Schwab would receive access to DOE information.
Aug. 20, 1991	Lee Hy Paving Corporation, Richmond, VA	RR272-82	Request for modification/rescission in the crude oil refund proceeding. *If Granted:* The May 23, 1991 Dismissal Letter (Case No. RF272-64964) issued to Lee Hy Paving Corporation would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Aug. 22, 1991	Gulf/Cooper's Gulf, Atlantic Beach, FL	RR300-106	Request for modification/rescission in the Gulf refund proceeding. *If Granted:* The June 21, 1991 Decision and Order (Case No. RF300-11617) issued to Cooper's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 16 to Aug. 23, 1991]

Date received	Name of refund proceeding/name refund applicant	Case No.
08/19/91	Woodrow Wilson	RF300-17477.
08/19/91	Three Point Service Station.	RF341-6.
08/19/91	Barney Foster	RF335-39.
08/19/91	City Public Serv/ San Antonio.	RF332-9.
08/19/91	H.E. Graham	RF311-15.
08/20/91	Bowman Public Schools.	RA272-44.
08/21/91	Roadway Express, Inc.	RF300-17478.
08/21/91	Chasteny Oil Company.	RF300-17479.
08/21/91	Paul Dean Clay	RF335-40.
08/22/91	Bob's Arco Mini-Mart.	RF304-12425.
08/22/91	State of Iowa	RC272-137.
08/22/91	Nolly's Shell Service.	RF315-10153.
08/23/91	U.S. Compressed Gas Co.	RF340-12.

REFUND APPLICATIONS RECEIVED—Continued

[Week of Aug. 16 to Aug. 23, 1991]

Date received	Name of refund proceeding/name refund applicant	Case No.
08/16/91 thru 08/23/91.	Texaco Refund Applications Received.	RF321-16443 thru RF321-16736.
08/16/91 thru 08/23/91.	Crude Oil Refund Applications Received.	RF272-89606 thru RF272-89616.

[FR Doc. 91-23837 Filed 10-2-91; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of September 6 Through September 13, 1991

During the Week of September 6 through September 13, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 27, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 6 through Sept. 13, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 9, 1991	Fuel Services, Inc., Jacksonville, FL	LEE-0028	Exception to the reporting requirements. *If Granted:* Fuel Services, Inc., would not be required to file Form EIA-782B, "Resellers/ Retailer's Monthly Petroleum Product sales Report".

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Sept. 6 through Sept. 13, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 10, 1991	Hutchinson Carter Co., Apple Valley, CA	LFA-0146	Appeal of an information request denial. *If Granted:* The August 21, 1991 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Hutchinson Carter Company would receive access to requested information concerning No. DE-AC04-87AL44685.
Sept. 11 1991	Olin Pantex, Inc., St. Petersburg, FL	LFA-0147	Appeal of an information request denial. *If Granted:* The August 26, 1991 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Olin Pantex, Inc., would receive access to documents concerning Solicitation No. DE-RP04-90-DP65030 for the management and operating contractor for the Pantex Plant.
Sept. 12, 1991	International Brotherhood of Electrical Workers, Walnut Creek, CA.	LFA-0148	Appeal of an information request denial. *If Granted:* The August 9, 1991 Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and the International Brotherhood of Electrical Workers would receive names pertaining to The Brink Electric Substation job completed last year in Livermore, CA.

REFUND APPLICATIONS RECEIVED

[Week of Sept. 6 through Sept. 13, 1991]

Received	Name of firm	Case No.
9/6/91 thru 9/13/91.	Texaco Refund Applications Received.	RF321-16813 thru RF321-16844.
9/6/91 thru 9/13/91.	Crude Oil Refund Applications Received.	RF272-89765 thru RF272-89780.
9/9/91	Hudson's Tire Exchange.	RF341-8.
9/9/91	Carson Petroleum Co.	RF330-53.
9/9/91	Town of Valdese	RF300-17581.
9/9/91	Stanley R. Brown	RF300-17582.
9/9/91	Mahlon C. Woolard, Jr.	RF300-17583.
9/9/91	Wyatt's Service	RF315-10163.
9/10/91	Schreimer's, Inc	RF340-15.
9/10/91	Maple Crest Auto Center, Inc.	RF304-12499.
9/10/91	Brice & I-Seventy Arco.	RF304-12500.
9/10/91	Simpson's Shell Service.	RF315-10164.
9/11/91	Donald A. Reisenauer.	RC272-138.
9/13/91	Andrew M. Wolov-Trustee.	RF340-16.
9/13/91	Charles J. Byars	RF300-17584.

[FR Doc. 91-23838 Filed 10-2-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4018]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: State Revolving Fund Program (ICR # 1391.02).

Abstract: Title VI of the Clean Water Act (CWA) authorizes the providing of grants to States in order to set up State Water Pollution Control Revolving Funds. State Revolving Funds serve primarily to help in the construction of publicly-owned treatment works (POTWs). Information requirements associated with the State Revolving Fund Program are outlined in Section 606 of the CWA.

Before receiving a capitalization grant for its revolving fund, a State must agree to contribute partial funding of its own, and to meet certain accounting, compliance, and enforcement commitments. States must provide EPA with an Intended Use Plan/ Capitalization Grant Agreement, Annual Reports, and State Audits.

The Intended Use Plan/Capitalization Grant Agreement serves to establish a State's commitment to manage its State Revolving Fund (SRF) in accordance with the CWA. This submission consists of application materials, a payment schedule and certification documents.

The Annual Report outlines the achievements of a State under its Intended Use Plan at the end of each fiscal year, and includes information on the recipients of loans, loan conditions and amounts, as well as other financial information.

State Audits are a yearly requirement, under which each State must conduct an independent financial and compliance audit of its SRF program. The audit report must include a conclusion as to whether or not the program meets compliance requirements.

After EPA has approved a State's capitalization grant application and the State establishes its State Revolving Fund program, local communities will submit applications to the States for SRF financial assistance. These applications must meet specifications which the States themselves have set. Typically, the local community applicants are required to submit a project description, a cost estimate, a disbursement schedule, a construction schedule, an analysis of environmental and cost impact, and a description of the applicant's financial capability and repayment source.

States review these applications for their conformity to the Intended Use Plan, as well as for their environmental impacts and the applicant's financial status. If an application meets a State's requirements, the State will prepare a loan for the application.

Burden Statement: The average burden imposed by the State Revolving Fund Program is 66 hours per response. This figure includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: States, local communities.

Estimated No. of Respondents: 646.

Estimated Total Annual Burden of Respondents: 93,636 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer,
U.S. Environmental Protection Agency,
Information Policy Branch (PM–223Y),
401 M Street, SW.,
Washington, DC 20460
and
Matt Mitchell,
Office of Management and Budget,
Office of Information and Regulatory Affairs,
725 17th St., NW.,
Washington, DC 20503.

Dated; September 27, 1991.

Jane Stewart,

Acting Director, Regulatory Management Division.

[FR Doc. 91–23798 Filed 10–2–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59301B; FRL 3950–8]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–91–25. The test marketing conditions are described below.

EFFECTIVE DATE: September 27, 1991.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 260–2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–91–25. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–91–25. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–91–25

Date of Receipt: August 5, 1991.

Notice of Receipt: August 21, 1991 (56 FR 41560).

Applicant: Confidential.

Chemical: (G) Cationic aqueous polyurethane dispersion.

Use: A leather and textile treatment.

Production Volume: 64,000 kilograms.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: September 27, 1991.

Paul J. Campanella,

Acting Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91–23844 Filed 10–2–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

September 25, 1991.

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503 (202) 395–4814.

OMB Number: 3060–0264.

Title: Section 80.413, On-board station equipment records.

Action: Extension.

Respondents: Individuals or households, state or local governments, federal agencies or employees, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 1,000 recordkeepers; 2 hours average burden per recordkeeper; 2,000 hours total annual burden.

Needs and Uses: The recordkeeping requirement contained in § 80.413 is necessary to document the number and type of transmitters operating under an on-board station license. The information is used by FCC personnel during inspections and investigations to determine what mobile units and repeaters are associated with on-board stations aboard a particular vessel. If this information were not collected, no means would be available to determine if this type of radio equipment is authorized or who is responsible for its operation. Enforcement and frequency management programs would be negatively affected.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–23781 Filed 10–2–91; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1862]

Petition for Reconsideration and Clarification and Application for Review of Actions in Rule Making Proceedings

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Oppositions to these petitions must be filed October 21, 1991. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Portageville and New Madrid, Missouri). (MM Docket No. 91–43).
Number of Petitions Received: 1.

Subject: Telecommunications Services for Hearing-Impaired Individuals, and the Americans with Disabilities Act of 1990. (CC Docket No. 90–571).
Number of Petitions Received: 5.

Subject: Policies and Rules Concerning Operator Service Access and Payphone Compensation. (CC Docket No. 91–35).
Number of Petitions Received: 5.

Application for Review

Subject: Certain Packet Radio Transmissions by Amateur Station KA3T, Licensee Richard A. White.
Number of Petitions Received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–23782 Filed 10–2–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Garwin McNeilus, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 21, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Garwin McNeilus, Denzil McNeilus, and McNeilus Financial, Inc., Dodge Center, Minnesota; to acquire 100 percent of the voting shares of Mower Agency, Inc., Austin, Minnesota, and thereby indirectly acquire Sterling State Bank, Austin, Minnesota.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. G.W. and Cheryl L. Lowry, Clinton, Oklahoma; to acquire an additional 0.69 percent of the voting shares for a total of 26.84 percent; Lacy Leigh Lowry Trust, Trustee, Oklahoma Bank and Trust Company, Clinton, Oklahoma, to acquire an additional 0.01 percent for a total of 0.46 percent; and George Wheeler Lowry Trust, Trustee, Oklahoma Bank and Trust Company, Clinton, Oklahoma, to acquire an additional 0.01 percent for a total of 0.46 percent of the voting shares of Oklahoma Bancorporation, Inc., Clinton, Oklahoma, and thereby indirectly acquire Oklahoma Bank and Trust Company, Clinton, Oklahoma, and Custer County State Bank, Arapaho, Oklahoma.

Board of Governors of the Federal Reserve System, September 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–23777 Filed 10–02–91; 8:45 am]

BILLING CODE 6210–01–F

Old Second Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 24, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Second Bancorp, Inc., Aurora, Illinois; to acquire 100 percent of the voting shares of KCB Acquisition Corp., Elburn, Illinois, and thereby indirectly acquire Kane County Bank and Trust Company, Elburn, Illinois.

In connection with this application, KCB Acquisition Corporation, Elburn, Illinois; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Kane County Bank and Trust Company, Elburn, Illinois.

2. Ohnward Bancshares, Inc., Maquoketa, Iowa; to acquire 99.23 percent of the voting shares of Baldwin Savings Bank, Baldwin, Iowa.

3. Romy Hammes Bancorp, Inc., South Bend, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Marycrost, Bradley, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Worthen Banking Corporation, Little Rock, Arkansas; to acquire 100 percent of the voting shares of First National Bank of Fayetteville, Fayetteville, Arkansas.

Board of Governors of the Federal Reserve System, September 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–23928 Filed 10–2–91; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0333]

Central Soya Co., Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Central Soya Co., Inc. The NADA provides for the manufacture of a Type B medicated feed containing lincomycin. The firm requested the withdrawal of approval. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing and reserving the portion of the regulation that reflects approval of the NADA.

EFFECTIVE DATE: October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8749.

SUPPLEMENTARY INFORMATION: Central Soya Co., Inc., P.O. Box 1400, Fort Wayne, IN 46801-1400, is the sponsor of NADA 133-508, which provides for the manufacture of a Type B medicated feed containing lincomycin. The firm requested the withdrawal of approval of the NADA because an NADA is no longer required to manufacture or distribute the Type B medicated feed. (See 51 FR 7382, March 3, 1986, and 55 FR 23423, June 8, 1990).

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 133-508 and all supplements and amendments thereto is hereby withdrawn, effective October 15, 1991.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 558.325 by removing and reserving paragraph (a)(11) to reflect the withdrawal of approval.

Dated: September 27, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-23786 Filed 10-2-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90E-0096]

Determination of Regulatory Review Period for Purposes of Patent Extension; Lopressor® Oros®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Lopressor® Oros® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Klein, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase stars with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Lopressor® Oros®. Lopressor® Oros® (metoprolol fumarate) is indicated in heart diseases and vascular diseases, such as angina pectoris, hypertension, and certain forms of arrythmia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Lopressor® Oros® (U.S. Patent No. 3,998,790) from Aktiebolaget Hassle (Hassle) and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 16, 1990, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period. The letter also stated that the approval of the active ingredient, metoprolol fumarate, represented the first permitted commercial marketing or use of the product. The Patent and Trademark Office preliminarily denied Hassle's application in an order to show cause because: (1) the approval for marketing of Lopressor® Oros® was requested and obtained by a party not associated with Hassle for the purpose of commercial marketing, and (2) the application did not appear to meet the statutory requirements set forth in 35 U.S.C. 156(d)(1)(D) and 37 CFR 1.740(a)(11). Once it was determined that Hassle was eligible for extension and that the Hassle application was complete, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Lopressor® Oros® is 3,157 days. Of this time, 2,357 days occurred during the testing phase of the regulatory review period, while 800 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* May 8, 1981. The applicant claims April 8, 1981, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 8, 1981, which was 30 days after FDA's receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* October 20, 1987. FDA

has verified the applicant's claim that the new drug application (NDA) for Lopessor® Oros® (NDA 19–786 was approved on December 27, 1989.

3. *The date the application was approved:* December 27, 1989. FDA has verified the applicant's claim that NDA 19–786 was approved on December 27, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its application for patent extension. In its application for patent extension, this applicant seeks 1,324 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before December 2, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before March 31, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 19, 1991.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 91–23785 Filed 10–2–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91M–0351]

Allergan Optical; Premarket Approval of Duracare™ Rewetter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Optical, Irvine, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of Duracare™ Rewetter. After reviewing the recommendation of the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 21, 1991, of the approval of the application.

DATES: Petitions for administrative review by November 4, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

SUPPLEMENTARY INFORMATION: On July 2, 1990, Allergan Optical, Irvine, CA 92715–1599, submitted to CDRH an application for premarket approval of Duracare™ Rewetter. The device is a lubricating and rewetting solution and is indicated for use to lubricate and rewet acrylate, fluorosilicone acrylate, and fluoropolymer rigid gas permeable contact lenses.

On April 18, 1991, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On August 21, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 4, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 25, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91–23783 Filed 10–2–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91M–0355]

Westcon Contact Lens Co.; Premarket Approval of Technicon 38 (Polymacon) Hydrophilic Contact Lenses (Spherical and Toric)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Westcon Contact Lens Co., Grand Junction, CO, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the Act), of the spherical and toric configurations of the Technicon 38 (polymacon) Hydrophilic Contact Lenses. The lenses are to be manufactured under an agreement with

Allergan Optical, Inc., Woodbury, NY, which has authorized Westcon Contact Lens Co. to incorporate information contained in its approved premarket approval application (PMA) for the spherical and toric configurations of the Hydron® (polymacon) Hydrophilic Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 26, 1991, of the approval of the application.

DATES: Petitions for administrative review by November 4, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

SUPPLEMENTARY INFORMATION: On October 25, 1990, Westcon Contact Lens Co., Grand Junction, CO 81506, submitted to CDRH an application for premarket approval of the Technicon 38 (polymacon) Hydrophilic Contact Lenses (spherical and toric). The spherical and toric configurations of the Technicon 38 (polymacon) Hydrophilic Contact Lenses are indicated for daily wear for the correction of visual acuity in aphakic and notaphakic persons with nondiseased eyes that are myopic or hyperopic. The spherical lenses may be worn by persons who may exhibit astigmatism of 1.50 diopters (D) or less that does not interfere with visual acuity. The toric lenses may be worn by persons who have astigmatism of up to 6.00 D. In addition, both configurations of the lenses range in spherical power from −20.00 D to +20.00 D and may be disinfected using either a heat or chemical lens care system. The application includes authorization from Allergan Optical, Inc., Woodbury, NY 11797, to incorporate information contained in its approved premarket approval application for the spherical and toric configurations of the Hydron® (polymacon) Hydrophilic Contact Lens.

In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1991, this PMA was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicated information previously reviewed by this panel. On August 26, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 4, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 25, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91–23784 Filed 10–2–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91M–0364]

Westcon Contact Lens Co.; Premarket Approval of Technicon-45 Soft (Hefilcon A) Contact Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Westcon Contact Lens Co., Grand Junction, CO, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Technicon-45 (hefilcon A) Contact Lens. The device is to be manufactured under an agreement with Flexlens, Inc., Englewood, CO, which has authorized Westcon Contact Lens Co. to incorporate information contained in its approved premarket approval application for the FLEXLENS™ (hefilcon A) Contact Lens PHP™. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter on August 26, 1991, of the approval of the application.

DATES: Petitions for administrative review by November 4, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

SUPPLEMENTARY INFORMATION: On August 20, 1990, Westcon Contact Lens Co., Grand Junction, CO 81506, submitted to CDRH an application for premarket approval of the Technicon-45 Soft (hefilcon A) Contact Lens. The Technicon-45 Soft (hefilcon A) Contact Lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 2.00 diopters (D) or less that does not interfere with

visual acuity. In addition, the lens is to be disinfected using either a heat or chemical lens care system. The application includes authorization from Flexlens, Inc., Englewood, CO 80110, to incorporate information contained in its approved premarket approval application for FLEXLENS™ (hefilcon A) Contact Lens PHP™.

In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthhalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On August 26, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 4, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 25, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91-23855 Filed 10-2-91; 8:45 am]

BILLING CODE 4160-01-M

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HK (formerly Chapter HF) (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (49 FR 1075, March 19, 1984, and 56 FR 29484, June 27, 1991) is amended to reflect organizational and functional changes in the Food and Drug Administration (FDA). Within the Office of Operations in the Center for Veterinary Medicine, Office of Management, FDA proposes that the functional statements for the Office of Management be revised to highlight the Office of Management's efforts in internal control reviews and consumer and industry outreach.

Under section HK-B, Organization:

1. Insert the following paragraph under the Office of Operations (HKB), Center for Veterinary Medicine (HKBV) reading as follows:

Office of Management (HKBV1A). Provides guidance and leadership in the analysis, planning, coordination and evaluation of administrative management activities including: personnel; facilities; property; budget formulation and execution; program analysis; management analysis; communications, including freedom of information, equal employment opportunity, training, and education; procurement; automated data processing; travel; and messenger services to Center officials.

Plans, develops, and implements Center management policies. Provides leadership and direction for the management and administrative interface with the Office of the Assistant Secretary for Health (OASH), the Department for Health and Human Services (DHHS), and other Federal agencies.

Serves as Center interface with Agency and OASH and DHHS on budget issue resolutions.

Performs analysis, program assessments, or special studies of key issues relative to policy review and oversight. Directs a variety of short-range and long-range special projects or assignments of substantial significance to the Center.

Implements Internal Control Reviews in accordance with OMB, DHHS, and Agency guidelines. Provides direction in the preparation of responses to the Office of Inspector General and the General Accounting Office regarding audits and investigations.

Direct the Center's outreach efforts to consumers, professionals, and the industry in communicating the program goals and priorities of the Center.

Directs the Center's equal employment and affirmative action programs to effectively accomplish Center goals and to be responsive to Agency initiatives.

2. Delete subparagraph (m-1-i) Office of Management (HFV1A) in its entirety.

Dated: September 18, 1991.

David Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-23753 Filed 10-2-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement and Proposed Funding Preference, Funding Priority, Special Consideration, and Review Criteria For Grants for Residency Training and Advanced Education in the General Practice of Dentistry

The Health Resources and Services Administration announces that applications for Fiscal Year 1992 Grants for Residency Training and Advanced Education in the General Practice of Dentistry are being accepted under the authority of section 785 of the Public Health Service Act (the Act) extended by the Health Professions Reauthorization Act of 1988, title VI, Public Law 100-607 and invites comments on the proposed funding preference, priority, special consideration, and review criteria stated below. This authority will expire on September 30, 1991. This program announcement is subject to

reauthorization of this legislative authority and the appropriation of funds. The period of Federal support should not exceed 3 years.

Section 785 of the PHS Act (formerly section 786(b)) authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or an approved advanced educational program in the general practice of dentistry and to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

The Administration's budget request for Fiscal Year 1992 does not include funding for this program. The issuance of this announcement is a contingency action to assure that should funds become available, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of final regulations at 42 CFR part 57, subpart L.

Healthy People 2000 Objectives

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The grant program for Residency Training and Advanced Education in the General Practice of Dentistry is related to the priority area of Oral Health. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Lineage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Eligible Applicants

To be eligible for a Grant for Residency Training and Advanced Education in the General Practice of Dentistry, the applicant shall:

(a) Be a public or nonprofit private school of dentistry or an accredited postgraduate dental training institution (hospital, medical center, or other entity) and be accredited by the appropriate accrediting body, and

(b) Be located in any one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa or the Trust Territory of the Pacific Islands.

Categories of Program Support

There will be no funding preference between residency training programs and advanced educational programs in general dentistry. Grant support will be available for three distinct categories of program development. Applications must address at least one of these categories.

Category 1: Program Initiation.

An application may request support for up to one year of program planning and development, followed by two years of program operation. For this purpose an applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1 of the current fiscal year). Before a second-year grant award will be made, the grantee must show an accreditation classification of accreditation eligible.

Category 2: Program Expansion.

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

Category 3: Program Improvement.

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval accreditation status. Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum/and or facilities to enhance the quality of the program.

Established Review Criteria

The review of applications will take into consideration the following criteria which are found at 42 CFR part 57, subpart L:

(a) The potential effectiveness of the proposed project in carrying out the training purposes of section 785 of the Act;

(b) The degree to which the proposed project adequately provides for meeting the project requirements;

(c) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner;

(d) The qualifications of proposed staff and faculty;

(e) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

Proposed Review Criteria for Fiscal Year 1992

The following review criteria are being proposed for fiscal year 1992:

1. The extent to which the objectives of the program are consistent with the purposes of the grant program, and the extent to which the evaluation methodology will effectively assess the impact of the project.

2. The extent to which the proposal demonstrates a need for the project.

3. The extent to which present or potential problems are understood by the applicant, and the extent to which solutions to these problems have been developed.

4. The extent to which the organizational and administrative relationships between institutional and programmatic components of the project enhance the achievement of project objectives.

5. The extent to which the curriculum will enhance the trainee's ability to become an efficient, effective competent practitioner of general dentistry.

6. The extent to which the trainee recruitment and selection process assures that highly qualified trainees with a true interest in general practice are enrolled in the program.

7. The extent to which the facilities and equipment used in the training program are appropriate to the general practice of dentistry.

8. The extent to which the budget justification is reasonable and indicates that institutional support to the project is provided to the maximum extent possible.

Experience with the program has demonstrated that the proposed review criteria are necessary to better assure that the objectives of the program are successfully met.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved

applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Proposed Funding Preference for Fiscal Year 1992

In making awards in FY 1992, the Secretary shall give preference to applicants proposing to establish new training positions, as part of either a new program or the expansion of an existing program.

First funding within this preference will be for approved applications designed to offer substantial clinical training experience for trainees to provide primary care services to underserved rural and urban areas, and high risk populations. The experiences must include training at one or more of the following entities: Health Professional Shortage Areas, (section 332 of the Act); Migrant Health Centers, (section 329 of the Act); Community Health Centers, (section 330 of the Act); health care facilities of the Indian Health Service (IHS); State designated clinic/centers serving an underserved population; or other rural/urban health clinics that meet grant program requirements.

Applicants may address the funding preference by:

1. Establishing a new accredited advanced general dentistry program in one or more of the prescribed entities;

2. Establishing trainee off-site rotations into one or more of the prescribed entities as part of a new or existing advanced general dentistry program; or

3. Increasing the number of training positions in an existing advanced general dentistry program that currently provides training experiences in one or more of the prescribed entities, either by location of the primary site or by off-site rotations.

The following guidelines must be addressed within the application when requesting the funding preference:

(a) The new training positions must be PGY–1 positions.

(b) In regard to service to underserved and high risk populations, 20 percent of each resident's training time over the course of the training program must occur in eligible migrant health center or community health center sites or facilities or in conjunction with an eligible health professions shortage area patient population and/or in hospitals and facilities of the Indian Health Service. At least 50 percent of the teaching program patient population at each facility that is not a migrant health center, a community health center, or an Indian Health Service health care facility must be composed of patients residing in or defined by a designated health profession shortage geographic area, population or facility.

This funding preference recognizes the continued importance of increasing the number of general dentistry training opportunities. In addition, it implements the HRSA education and service linkage strategy.

Proposed Funding Priority for Fiscal Year 1992

In determining the order of funding of approved applications, the HRSA is proposing that a funding priority be given to:

New Applicants: Applicants who have been operating an advanced general dentistry program for five years or less, and are proposing to increase the number of trainees in the program, and have not received funds under this authority.

This priority is intended to encourage eligible institutions to proceed with initiating and expanding programs in years when no competitive grant funds are available, and to assist recently established programs during their more costly start up years.

Proposed Special Consideration for Fiscal Year 1992

In the review of applications, the HRSA is proposing that special consideration be given to applicants that:

1. Propose didactic and clinical training experiences concerning ambulatory and inpatient case management of HIV/AIDS infection related diseases;

2. Propose multidisciplinary geriatric training experience in ambulatory settings and inpatient and extended care facilities; and/or

3. Propose didactic and clinical training experiences in dental care for the medically compromised, chronically ill and physically or mentally handicapped.

These enrollment and curriculum content features are important to the enhancement of general dentistry programs.

The proposed funding preference, priority, and special consideration do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect the proposed funding preference, priority, or special consideration are encouraged to submit applications.

Definitions

The following definitions apply to those training sites/facilities included in the proposed funding preference listed above:

Community health center means an entity as defined in section 330 of the Public Health Service Act and in regulations at 42 CFR 57.102(c).

Health professional shortage area means an area designated under section 332 of the PHS Act.

Migrant health center means an entity as defined in section 329(a) of the Public Health Service Act and in regulations at 42 CFR 56.102(g)(r).

Interested persons are invited to comment on the proposed funding preference, priority, special consideration, and review criteria. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1992 award cycle, this comment period has been reduced to 30 days. All comments received on or before November 4, 1991, will be considered before the final funding preference, priority, special consideration, and review criteria are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preference, priority, special consideration, and review criteria will be applied.

Written comments should be addressed to: Mr. Neil Sampson, Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Grant application materials are being mailed only in response to requests received. Requests for application materials and questions regarding grants policy and business management aspects should be directed to: Ms. Mary Allen, Grants Management Specialist (D–30), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room

8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6002.

Completed applications should be sent to the Grants Management Officer at the above address.

To obtain specific information concerning programmatic aspects of the grant program, contact: Dr. Richard Weaver, Chief, Dental Health Branch, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–15, Rockville, Maryland 20857, Telephone: (301) 443–6837.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785, and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately six months from the first deadline.

The application deadline date is December 6, 1991. Applications will be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

This program is listed at 93.897 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: August 30, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–23788 Filed 10–2–91; 8:45 am]

BILLING CODE 4160–15–M

Availability of Funds for Grants to Provide Outpatient Early Intervention Services With Respect to HIV Disease

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the President's budget for Fiscal Year 1992 includes $44.9 million for discretionary grants to provide outpatient early intervention services with respect to human immunodeficiency virus (HIV) disease. These grants will be awarded under the provisions of subpart II and subpart III of part C of title XXVI of the "Public Health Service (PHS) Act as amended by the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101–381 (42 U.S.C. 300ff–51—300ff–67). This announcement is made prior to an appropriation of funds to allow applicants sufficient time to establish active collaboration and coordination, to prepare applications, and to enable award of the grants in a timely fashion consistent with the special needs of those affected by HIV disease. Solicitation of applications in advance of an appropriation will enable the award of appropriated grant funds in the most expeditious manner and allow prompt provision of early intervention services to patients who need them. On the basis of the President's budget, it is anticipated that approximately 100 noncompeting continuation grants will be awarded to organizations that received grants in FY 1991, and who are currently providing early intervention services in rural and urban areas. The range of project support is approximately $100,000 to $500,000, depending upon the number of individuals who will receive care through this effort. The budget period will be for 12 months. All applicants should understand, however, that final appropriation action will be necessary in order for HRSA to fund any applications. The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. This grant program is related to the following priority areas: Increase the proportion of HIV-infected persons who are tested; increase the proportion of primary care providers who provide age-appropriate HIV counseling; and increase the proportion of family planning and primary care providers who provide a comprehensive HIV program. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202 783–3238).

DUE DATES: To receive consideration, applications for noncompeting continuation grants with January 1, 1992, start dates are due November 4, 1991 and those with September 30, 1992, start dates are due June 1, 1992. Applications for new grants are also due June 1, 1992. Applications are considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant.

ADDRESSES: Application kits (Form PHS 5161–1 with revised face sheet HHS Form 424, as approved by the Office of Management and Budget under control number 0937–0189) may be obtained from, and completed applications should be mailed to, the appropriate PHS Regional Grants Management Officer (RGMO) (see Appendix). The RGMO can also provide assistance on business management issues.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Joan Holloway, Director, or Dr. Joseph O'Neill, HIV Program Director, Division of Special Populations Program Development, Bureau of Health Care Delivery and Assistance (BHCDA), at 5600 Fishers Lane, Rockville, Maryland 20857 (telephone 301 443–8113).

SUPPLEMENTARY INFORMATION: Eligible applicants for funding under title XXVI of the PHS Act are current grantees funded under sections 330 and/or 329 (community and migrant health centers), section 340 (health care for the homeless), and section 1001 (private nonprofit family planning programs) of the PHS Act, centers funded under the Comprehensive Hemophilia Diagnostic and Treatment Programs, federally-

qualified health centers operating under sections 1861(aa)(4) and 1905(1)(2)(B) of the Social Security Act, as amended by sections 4161(a)(2)(c) and 4704(c) of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101–508, and other public and private nonprofit entities that provide comprehensive primary care services to populations at high risk of HIV disease. If new grants are made to organizations that are not currently receiving HIV grants from BHCDA (under Part C of title XXVI), preference will be given to qualified applicants that are experiencing an increase in the burden of providing services regarding HIV disease, as indicated by a needs assessment furnished by the applicant. Equitable allocation be made to both rural and urban applicants based on the applications received.

Funding under this grant program is intended to increase the capacity of the specified entities to improve access by offering higher quality and broader scope HIV-related early intervention services to a greater number of people who are at risk of HIV infection in their service area. The program must provide the services specified in the statute (sections 2661, 2662) and may provide for a set of other optional services.

The required services to be provided under this grant are:

- Comprehensive individual counseling regarding HIV disease according to specific statutory mandates for the content and conduct of pretest counseling, counseling of those with negative test results, counseling of those with positive results, and with attention to the appropriate setting for all counseling;
- Testing individuals with respect to HIV disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;
- Appropriate referral to service providers funded under parts A and B of title XXVI of the PHS Act, and to biomedical research facilities, community-based organizations or other entities that offer experimental treatment for HIV disease;
- Other clinical and diagnostic services regarding HIV disease, and periodic medical evaluations of individuals with the disease; and
- Providing therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease.
- Outreach, case-management, and counseling for eligibility for other health services may be included on an optional basis if they can be shown to be essential to the delivery of care.

Applicants, or providers acting under an agreement with the applicant, must be participating and qualified providers under the State Medicaid plan approved under title XIX of the Social Security Act; a waiver procedure is available from BHCDA. Grantees are required to maximize service reimbursements from private insurance, Medicare, other Federal programs, and other third party payment sources.

The applicant must agree that the services provided will conform to the assurances and agreements required under the statute that:

- The applicant will participate in a part B, title XXVI, consortium if such a consortium exists.
- Hemophilia services will be provided through the network of regional comprehensive hemophilia diagnostic and treatment centers.
- The applicant will ensure confidentiality of patient information.
- Testing will be provided only after obtaining a statement that the testing is done after counseling has been conducted and that the decision of the individual to undergo testing is volunatarily made.
- The BHCDA reporting requirements will be met.
- Opportunities for anonymous testing will be provided.
- Individuals seeking services will not have to undergo testing as a condition of receiving other health services.
- The level of pre-grant early intervention service expenditures will be maintained.
- A sliding fee schedule with the limits established in the statute will be utilized.
- Funds will not be expended for services covered, or which could reasonably be expected to be covered, under any State compensation program, insurance policy, or under any Federal or State health benefits program, or by an entity that provides health services on a prepaid basis.
- Funds will be expended only for the purposes awarded, such procedures for fiscal control and fund accounting as may be necessary will be established, and not more than 5 percent of the grant will be expended for administrative expenses. Funds may not be expended for construction, inpatient care, or residential care.
- Counseling programs shall not be designed to promote or encourage, directly, injecting drug use or sexual activity, homosexual or heterosexual; shall be designed to reduce exposure to and transmission of HIV disease by providing accurate information; and shall provide information on the health risks of promiscuous sexual activity and injecting drug use.

Criteria for Evaluating Applications

A. Non-Competing Continuations

Applications will be evaluated on the following elements, as well as those under Paragraph B.:

1. Documented continued need for early intervention services.
2. Well-functioning counseling and testing programs.
3. Appropriate and timely progress toward meeting the objectives proposed and funded in the first year.

B. New Competing Grants

In its review of applications for new projects, BHCDA will consider the extent to which an application addresses or provides:

1. The need in the community, based on the 2–year period preceding the proposed grant period, for additional preventive and primary care services to those at-risk for HIV infection and persons with HIV infection, barriers to meeting those needs with the existing service provider system, and other information (i.e. epidemiological and health resources data) that makes a compelling case for the grant requested as specified in section 2653 of the PHS Act.
2. Description if the existing, plus extended, scope of counseling and testing, referral, primary care prevention, diagnostic and treatment services, and optional outreach, case-management, or eligibility assistance services provided by the applicant.
3. Description of the actions taken to assure effective collaboration with city/county/State health department HIV prevention activities supported by the Centers for Disease Control and with State Care Consortia funded under section 2613 of the PHS Act; description of efforts to achieve consistency with priorities of the HIV Planning Council in the cities funded under section 2602 of the PHS Act and programs funded by other PHS agencies.
4. Cost identification and cost control procedures, and third-party reimbursement and other fiscal and administrative policies that will maximize the grant funds awarded.
5. A plan for evaluating the impact of the program on the health of patients participating in the program, a plan for assessing the quality of care provided by the grant supported program, and the

capacity to provide the data required for the reports to the Secretary.

Other Grant Information

The Grant Program to Provide Outpatient Early Intervention Services with Respect to HIV Disease has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State point of contact (SPOC) in the State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate deadline dates. The BHCDA does not guarantee that it will accommodate or explain its responses to State process recommendations received after the date. (See "Intergovernmental Review of Federal Programs", Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

The grantee must maintain the cost of providing early intervention service at the level equal to or not less than the level expended in the year preceding the grant year. This supports the purpose of this grant, i.e., expanding the capacity to provide more and different early intervention services, and avoids any supplantation of funds provided by other sources.

Grants will be administered in accordance with HHS Regulations in 45 CFR part 92 for State and local governments, or 45 CFR part 74 for other grantees.

The OMB *Catalog of Federal Domestic Assistance* number for this program is 93.918.

Dated: August 16, 1991.

John H. Kelso,

Acting Administrator.

Appendix—Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203 (617) 565–1482.

Region II: Steven Wong, Grants Management Officer, PHS Regional Office II, room 3300, 26 Federal Plaza, New York, NY 10278 (212) 264–4496.

Region III: Marty Bree, Grants Management Officer, PHS Regional Office III, P. O. Box 13716, Philadelphia, PA 19101 (215) 596–6653.

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, room 1106, 101 Marietta Tower, Atlanta, GA 30323 (404) 331–2597.

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603 (312) 353–8700.

Region VI: Frank Cantu, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202 (214) 767–3885.

Region VII: Hollis Hensley, Acting Grants Management Officer, PHS Regional Office VII, room 501, 601 East 12th Street, Kansas City, MO 64106 (816) 426–5841.

Region VIII: Jerry F. Wheeler, Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294 (303) 844–4461.

Region IX: Linda Gash, Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102 (415) 556–2595.

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121 (206) 553–7997.

[FR Doc. 91–23789 Filed 10–2–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Opportunity for a License; Potential Vaccines for Group B and Group C Meningococci and E. Coli K1

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health desires to license a method for producing a potential vaccine against group B and C meningitis and infections caused by E. Coli K1, such as neonatal meningitis and upper urinary tract infections. The inventors have created polysaccharide-protein conjugates which elicit IgG and IgM antibodies against the pathogens—Escherichia Coli K1, Meningococcus Group B, and Meningococcus Group C. Advantages of this potential vaccine include its potential to elicit protection from all three pathogens and its possible use in children under 18 months. Complete details regarding this discovery were published in Proceedings of the National Academy of Sciences, Volume 88, pp. 7175–7179, August 1991, Medical Sciences. NIH is the assignee of the patent rights for this technology covered under U.S. Patent Application 07/667,170 and developed by Drs. John Robbins, Rachel Schneerson and Sarvamangala J.N. Devi of the National Institute of Child Health and Human Development. Due to the strong public health interest in rapid commercial development of this potantial vaccine, all applications for a license to this technology should be filed within 90 days of the date of this **Federal Register** notice.

ADDRESSES: License applications or inquiries should be directed to: Mr. Mark Hankins, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Building 31, room B1C36, Bethesda, MD 20892 (telephone: (301) 496–0750).

Dated: September 27, 1991.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 91–23733 Filed 10–2–91; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409–24, August 31, 1982, as amended most recently in pertinent part at 56 FR 40619, August 15, 1991) is amended to reflect the revision of the Division of Health Services Scholarships in the Bureau of Health Care Delivery and Assistance, within the Health Resources and Services Administration (HRSA).

Under HB–10, Organization and Functions, amend the Bureau of Health Care Delivery and Assistance (HBC), as follows:

1. Delete the Division of Health Services Scholarships (HBC7) functional statement in its entirety and insert the following:

Division of Health Services Scholarships (HBC7). Responsible for the administration of the Public Health/National Health Service Corps Scholarship Training Program, the

NHSC Scholarship Program, the Native Hawaiian Scholarship Program, the NHSC Loan Repayment Program, the Nursing Education Loan Repayment Agreements, and the Nursing Student Loan Demonstration Project. Specifically: (1) Directs and administers these programs, including the recruitment, application, selection and awarding of scholarship and loan repayment funds, as well as approving deferments, suspensions, service completions, waivers and default of service and payment obligations; (2) develops and implements program plans and policies, and operating and evaluation plans and procedures in coordination with the Office of Program and Policy Development; (3) provides guidance and technical and assistance to Public Health Service staff in regional offices and to staff of educational and lending institutions; (4) maintains liaison with, and provides assistance to, program-related public and private professional organizations and institutions; (5) maintains liaison with the Office of the General Counsel (OGC) and the Office of the Inspector General, DHHS, and the offices of the U.S. Attorneys, Department of Justice, in the development of litigation cases and appropriate implementation of statutes and regulations; (6) consultation with the Division of Fiscal Services (DFS), HRSA, coordinates financial aspects of programs with educational and lending institutions; (7) in coordination with the Office of Data Management, develops program data needs, formats and reporting requirements, including collection, collation, analysis and dissemination of data; (8) participates in the development of forward plans, legislative proposals, and budgets; (9) develops and implements program responsibility for the plans and policies in managing the Bureau's Freedom of Information Act, Privacy Act and Discovery and requests received from the courts; (10) in coordination with the DFS and OGC manages the cases of scholar and loan repayment recipients and default and (11) provides testimony on behalf of the U.S. Government during litigation of scholarship and loan repayment program cases.

Dated: September 25, 1991.

Robert G. Harmon,

Administrator, Health Resources and Services Administration.

[FR Doc. 91-23790 Filed 10-2-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 56 FR 34207-8, July 26, 1991), is amended to reflect the following changes within the National Cancer Institute (HNC); (1) revise the functional statement of the Division of Extramural Activities (HNC5). The functional statement was revised to add a reference to the Division of Extramural Activities' responsibility for the Comprehensive Minority Biomedical Program and to delete a reference to an activity that is no longer a responsibility of the Division of Extramural Activities.

Section HN-B, Organization and Functions, is amended by deleting the functional statement under the heading *Division of Extramural Activities (HNC5),* and substituting the following:

Division of Extramural Activities (HNC5). (1) Administers and directs the Institute's grant and contract review activities;

(2) Provides initial technical and scientific merit review of grants and contracts for the Institute;

(3) Represents the Institute on NIH extramural and collaborative program policy committees and coordinates such policy for the review and administration of grants and contracts;

(4) Coordinates the Institute's review of research grant and training programs with the National Cancer Advisory Board and the President's Cancer Panel;

(5) Coordinates the implementation of committee management policies within the Institute and provides the Institute's staff support for the National Cancer Advisory Board and the President's Cancer Panel;

(6) Monitors and coordinates the operation of the divisional Boards of Scientific Counselors to assure uniformity and timeliness of the concept review of projects to be developed under contract or in response to a Request for Applications (RFA);

(7) Coordinates program planning and evaluation in the extramural area;

(8) Provides scientific reports and analyses to the Institute's grant and contract programs; and

(9) Administers programs to broaden participation by minorities in cancer-related research and training activities and to enhance the effectiveness of programs in cancer treatment and control in reaching the minority community and other historically underserved segments of the general population.

Dated: September 24, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-23734 Filed 10-2-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-010-01-4333-12]

Closure of Natural Trap Cave, Big Horn County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Closure of Natural Trap Cave to all uses except scientific.

SUMMARY: Notice is hereby given that effective immediately, Natural Trap Cave located in the Little Mountain area of Big Horn County, Wyoming on public land administered by the Bureau of Land Management (BLM), Worland District, Cody Resource Area, is closed to all uses except scientific. This action is being taken to protect world class paleontological resources within the cave which include examples of fauna and other scientific data from about 250,000 years before present. Individuals or institutions wanting access to Natural Trap Cave for scientific research efforts must submit a letter of intent and research plan to the BLM authorized officer (BLM Cody Resource Area Manager) in order to obtain access authorization.

EFFECTIVE DATES: This closure will be effective November 4, 1991. The closure will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Bob Dieli, Outdoor Recreation Planner or Duane Whitmer, Area Manager, Cody Resource Area, P.O. Box 518, 1714 Stampede Avenue, Cody, Wyoming 82414. Telephone: (307) 587-2216.

SUPPLEMENTARY INFORMATION: The Cody Resource Area is responsible for the management of an extensive cave system located in the Little Mountain area of the Bighorn Mountains. These cave resources are protected under the Federal Cave Resources Protection Act of 1988, the Federal Land Policy and Management Act of 1976, and the Antiquities Act of 1906. Natural Trap Cave is an internationally significant cave and past authorized recreation use has threatened the integrity of the paleontological resources.

Authority for closure orders is provided under 43 CFR subpart 8364.1.

Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: September 24, 1991.

Darrell Barnes,

District Manager.

[FR Doc. 91–23802 Filed 10–2–91; 8:45 am]

BILLING CODE 4310–22–M

California Desert District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579, title IV, section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Thursday, October 17, 1991 from 10 a.m. to 4 p.m. in the conference room of the California Desert Information Center, 831 Barstow Road, Barstow, California 92311.

The agenda for the meeting will include:

—Wild Horse and Burro Management
—Range Management Perspectives by Resource Area
—Desert Tortoise and Desert Tortoise Habitat
—Riparian Management
—Desert Plan Amendment Discussion

The meeting is open to the public, with time allotted for public comment after each agenda subject has been presented.

Summary minutes of the meeting will be maintained in the California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507, and will be available there for public inspection during regular business hours—7:45 a.m. to 4:30 p.m. (PDT)—within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management, California Desert District Office, Larry Morgan, 6221 Box Springs Boulevard, Riverside, California 92507 (714) 653–1359.

Dated: September 26, 1991.

Alan Stein,

Acting District Manager.

[FR Doc. 91–23756 Filed 10–2–91; 8:45 am]

BILLING CODE 4310–40–M

[WY–010–01–4333–10]

Emergency Seasonal Use Closure for All Motor Vehicles; Carter Mountain Area, Park County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency seasonal use closure (November 15, 1991 through April 30, 1992) for all motorized vehicles on the Carter Mountain Area of Critical Environmental Concern (ACEC), Park County, Wyoming.

SUMMARY: The Cody Record of Decision and Approved Resource Management Plan (RMP), dated November 8, 1990, designated vehicular use in the Carter Mountain ACEC as "limited to designated roads and trails." In response to a request from the Wyoming Game and Fish Department, the BLM staff and the Wyomig Game and Fish Department personnel met on July 16, 1991 and determined the off-road vehicle designation on the Carter Mountain ACEC as "Closed" to all motorized vehicles, including over-the-snow vehicles, from November 15, 1991 through April 30, 1992. This seasonal use closure is to assist the Wyoming Game and Fish Department in their efforts to relieve pressure on the local elk herd and reduce the size of the migratory elk herd by allowing more elk to move into the lower reaches of their winter range.

DATES: This closure will be effective November 15, 1991 through April 30, 1992.

FOR FURTHER INFORMATION CONTACT: Bob Dieli, Outdoor Recreation Planner or Duane Whitmer, Area Manager, Cody Resource Area, P.O. Box 518, 1714 Stampede Avenue, Cody, Wyoming 82414. Telephone: (307) 587–2216.

SUPPLEMENTARY INFORMATION: The Carter Mountain area (about 7,819 acres) is designated an ACEC. The objective for management of the Carter Mountain ACEC is to protect areas of unique alpine tundra and fragile soils. According to the Cody Record of Decision and Approved Resource Management Plan, vehicular use in the ACEC will be limited to designated roads and trails as a result of future activity planning. If the need for more permanent seasonal limitations are indicated in this activity plan, then the Cody ARMP could be amended. Until the activity planning is conducted, the use is limited to existing roads and trails. In addition to these restrictions, this emergency seasonal use closure will close the ACEC to all vehicular use, including over-the-snow vehicles, from November 15, 1991 through April 30, 1992. The Wyoming Game and Fish Department feels that motorized vehicle use can disrupt the migration patterns of all wildlife; however, elk are particularly affected by such use. By restricting motorized vehicle use, the elk will migrate in the Carter Mountain area, thus allowing more elk to move into the lower reaches of their winter range and the harvest will increase. After hunting season the area will remain closed through April 30, 1992 in order to reduce the stress on the wintering elk herds. This closure will also help in meeting the overall objectives to protect areas of unique alpine tundra and fragile soils in the Carter Mountain ACEC.

This emergency seasonal use closure applies to public lands in Park County, Wyoming, located approximately 20 miles west of Meeteetse, Wyoming. The designation affects all public lands above 10,000 feet elevation in T. 49 N., R. 103 W., Sixth Principal Meridian. Off-road use designations apply to all motorized vehicles with the exceptions of: (1) Any fire, military, emergency, or law enforcement vehicle when used for emergency purposes or any combat support vehicle when used for national defense purposes; (2) any vehicle whose use is expressly authorized by the Bureau of Land Management under permit, lease, license, or contract; and (3) any government vehicle on official business.

Authority for closure orders is provided under 43 CFR subpart 8364.1. Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: September 24, 1991.

Darrell Barnes,

District Manager.

[FR Doc. 91–23803 Filed 10–2–91; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW106504]

Proposed Reinstatement of Terminated Oil and Gas Lease

September 19, 1991.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW106504 for lands in Hot Springs County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U S.C

188), and the Bureau of Land Management is proposing to reinstate lease WYW106504 effective June 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 91-23804 Filed 10-2-91; 8:45 am]

BILLING CODE 4310-22-M

[ID-050-01-4212-12; IDI-25288]

Exchange of Public Land, Idaho; Correction

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: State Exchange of public land in Gooding County, Idaho for private land in Blaine, Camas, Gooding, Jerome, Lincoln and Minidoka Counties, Idaho; Correction to legal description previously published in the **Federal Register** Friday, July 5, 1991, Vol. 56, No. 129, page 30762.

SUMMARY: Add: T. 3 S., R. 22 E., section 16 (640 acres) to list of lands to be acquired from the State of Idaho.

Dated: September 25, 1991.

Janis L. VanWyhe,

Associate District Manager.

[FR Doc. 91-23806 Filed 10-2-91; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-91-4212-11; N-51565]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 20 ., R. 60 E.,
Sec. 15: W½NE¼NW¼, SE¼NE¼NW¼, S½NE¼NE¼NW¼, NW¼NW¼, S½NW¼, N½N½N½SW¼.
Aggregating 175 acres (gross).

The City of Las Vegas intends to use the land for Corporate Yard, University of Nevada Branch Campus and Flood Detention Basin. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.

2. Those rights for underground telephone/power lines granted to Nevada Power by permit No. N-51542 under the Act of October 21, 1976.

3. Those rights for an aerial transmission line granted to Nevada Power by permit No. Nev-043446 under the Act of October 21, 1976.

4. Those rights for an aerial transmission line granted to Nevada Power by permit number Nev-061618 under the Act of October 21, 1976.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: September 24, 1991.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 91-23807 Filed 10-2-91; 8:45 am]

BILLING CODE 4310-HC-M

[WY-040-01-4212-14; W109338]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Sweetwater County.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for direct public sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1719:

Sixth Principal Meridian

T. 19 N., R. 105 W.
Sec. 8, S½N½SE¼SE¼, S½SE¼SE¼.
The above lands aggregate 30 acres.

FOR FURTHER INFORMATION CONTACT: Sally Haverly, Realty Specialist, Bureau of Land Management, Green River Resource Area, 1993 Dewar Drive, Rock Springs, Wyoming, 82901, 307-362-6422.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate to Cleve and Brenda Martin and Elwin and Alice McGrew pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719. The Land is now under right-of-way and is used as a sewage lagoon site. The lagoon has been tested and certified as free of hazardous materials. The Rock Springs Grazing Association has been given a two-year notification of the cancellation of grazing privileges. The proposed direct sale would be made at fair market value.

The proposed sale is consistent with the Green River Management Framework Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contains no other known public values. The planning document and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Green River Resource Area Office, Rock Springs, Wyoming.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Sweetwater County road right-of-way, W71503.

3. Sweetwater County drainage ditch right-of-away, W124206. The public

lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever comes first.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manger, Rock Springs, P.O. Box 1869, Rock Springs, Wyoming 82902. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections this proposed realty action will become final.

Dated: September 25, 1991.

John S. McKee,

Associate District Manager.

[FR Doc. 91–23809 Filed 10–2–91; 8:45 am]

BILLING CODE 4310–22–M

[OR–020–01–4410–08; GP1–385]

Availability of Proposed Resource Management Plan and Final Environmental Impact Statement: Three Rivers Planning Area; Burns District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the availability of the Proposed Three Rivers Resource Management Plan and Final Environmental Impact Statement (RMP/EIS) for 1.7 million acres of Public Land and Federal mineral estate administered by the Bureau of Land Management (BLM) within Harney, Grant, Lake and Malheur Counties in eastern Oregon.

FOR FURTHER INFORMATION CONTACT: Craig M. Hansen, Three Rivers Resources Area Manager, Bureau of Land Management, Burns District, HC–74, 12533 Highway 20 West, Hines, Oregon 97738, (Telephone 503–573–5241).

SUPPLEMENTARY INFORMATION: This RMP/EIS addresses management on 1,709,918 acres of public land administered by the BLM in the Burns District, Oregon. Implementation of the Proposed Plan would result in improvement of water quality on 93 miles of stream. Decadal timber harvests would be approximately 5.4 million board feet from 7,722 acres of commercial timberland. Initial forage allocations would be 150,472 AUMs for livestock, 5,808 AUMs for wild horses and burros, and 7,836 AUMs competitive forage for big game. Also, there would be improvement in wetland aquatic and playa habitat conditions. There would be aggressive management of special status species (both plants and animals) and their habitats. The Diamond Craters Special Recreation Management Area (17,056 acres) would be retained. A total of 5.4 miles of river would be proposed for inclusion in the National Wild and Scenic Rivers System. Three existing Areas of Critical Environmental Concern (ACECs) would be retained (South Narrows ACEC—160 acres, Diamond Craters ONA/ACEC—16,656 acres, Silver Creek RNA/ACEC—640 acres). Two ACEC additions totaling 1,680 acres would be proposed (Diamond Craters ONA/ACEC addition—400 acres and Silver Creek RNA/ACEC addition—1,280 acres). Four new ACECs totaling 75,913 acres would be proposed (Foster Flat RNA/ACEC—2,690 acres, Dry Mountain RNA/ACEC—2,084 acres, Biscuitroot Cultural ACEC—6,500 acres and the Kiger Mustang ACEC—64,639 acres). Approximately 25,335 acres of public land would be considered for sale under various authorities over the life of the plan. Provision for mineral exploration and development within the planning area would be maintained.

A 30-day comment/protest period is provided. Complete protest requirements and procedures are presented in the RMP/EIS. All substantive comments will be considered in the final decision-making process leading to an Approved RMP/Record of Decision.

Dated: September 20, 1991.

Donald R. Cain,

Associate District Manager.

[FR Doc. 91–23805 Filed 10–2–91; 8:45 am]

BILLING CODE 4310–33–M

[NM–940–02–4730–12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The plats of survey described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico on September 25, 1991.

New Mexico Principal Meridian, New Mexico

T. 7 N. R. 2 E., Accepted August 28, 1991, for Group 829 NM.

T. 25 S. R. 24 E., Accepted September 9, 1991, for Group 884 NM.

T. 26 N. R. 7 W., Accepted August 28, 1991, for Group 879 NM.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504–1449. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: September 25, 1991.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 91–23810 Filed 10–2–91; 8:45 am]

BILLING CODE 4310–FB–M

[OR–943–01–4214–10; GP1–375; OR–47602]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 2,050.00 acres of National Forest System land to protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area in the Mt. Hood National Forest. This notice closes the land for up to two years from mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by January 2, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–0039.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, 503–280–7171.

SUPPLEMENTARY INFORMATION: On September 4, 1991, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. ch. 2). subject to valid existing rights:

Williamett Meridian

Mt. Hood National Forest

T. 7 S., R. 5 E.,

Sec. 14, SE¼SW¼SW¼, SE¼SW¼, and S½SE¼;

Sec. 22, SE¼SW¼, NE¼SE¼, S½NW¼ SE¼, and S½SE¼;

Sec. 23, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, E½NW¼, E½NW¼NW¼, SW¼NW¼NW¼, SW¼NW¼, and S½;
Sec. 24, SW¼SW¼SW¼;
Sec. 26;
Sec. 27, E½, E½NW¼, E½NE¼SW¼, and NE¼SE¼SW¼;
Sec. 34, N½NW¼NE¼;
Sec. 35, N½NE¼NE¼.

The area described contains 2,050.00 acres in Clackamas County, Oregon.

The purpose of the proposed withdrawal is to protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, and cooperative agreements, that are compatible with the intended use under the discretion of the authorized officer.

Dated. September 17, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-23811 Filed 10-2-91; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Outer Continental Advisory Board; Meeting

AGENCY: Minerals Management Service, Pacific OCS Region, Interior.

ACTION: National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; notice and agenda for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463.

The Pacific Regional Technical Working Group (RTWG) Committee of the National OCS Advisory Board is scheduled to meet October 30, 1991, from 8:30 a.m. to 5 p.m., at the Minerals Management Service Regional Office conference room at 770 Paseo Camarillo in Camarillo, California 93010. RTWG meetings are open to the public, and time has been set aside for public comment. However, this is primarily a technical meeting and does not address issues dealing with MMS policy. The tentative agenda for the meeting covers the following topics:

Opening Remarks

- 5-Year Program Development
- Interagency Coordination

—Tri-County Forum
—New Exploration Plan/Application for Permit to Drill (EP/APD) Process
—Risk Communication and Public Participation Training

- Calilornia State Environmental

Protection Agency

Members Reports

Status of National Marine Sanctuary Program Off California
Hard Bottom Subcommittee Report/ Recommendations
Postlease Issues Subcommittee Report
Regional Scientific Subcommittee
Oil Spill Prevention and Response

- Regulations Implementing Oil

Pollution Act of 1990

- Marine Spill Response Corp.

(MSRC)

- California Program
- Washington Program
- Oregon Program

Public Comment Period

Information about the meeting is available from the Public Affairs office at (805) 389-7520. Minutes of the meeting will be available for public inspection and copying at the following location: Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010.

Dated: September 26, 1991.

Peter L. Tweedt,

Deputy Regional Director, Pacific OCS Region.

[FR Doc. 91-23774 Filed 10-2-91; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf (OCS) Advisory Board—Scientific Committee (SC); Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C., appendix I, and the Office of Management and Budget Circular A-63, Revised.

The SC of the OCS Advisory Board will meet on Wednesday, November 13, and Thursday, November 14, 1991, at the Atrium Building, 381 Elden Street, Herndon, Virginia 22070, telephone (703) 787-1717. Below is a description of meetings that will occur related to the SC:

The SC will meet in subcommittees on Wednesday, November 13, from 8 a.m. to 5 p.m., to review regional studies nominated for the Fiscal Year 1993 National Studies List. The three subcommittees are: (1) Physical Oceanography; (2) Ecology; and (3) Socioeconomics.

The SC will meet in plenary session from 8 a.m. to 5 p.m., on Thursday, November 14, 1991. The agenda will cover the following principal subjects (others may be added later):

- Committee business and resolutions
- Environmental Studies Program

Status Review

- National Academy of Sciences

Review

- MMS Goals and Objectives

A detailed agenda may be requested from the MMS. In conjunction with the SC meeting, the MMS will hold a Socioeconomic Workshop from 8 a.m. to 5 p.m., on Tuesday, November 12, 1991. The agenda for the Workshop will cover the following subjects:

- Long-range information goals for

socioeconomic studies

- Research methodologies
- National Academy of Sciences

Reviews

All meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the SC plenary session.

All inquiries concerning the SC meeting should be addressed to Dr. Ken Turgeon, Chief, Environmental Studies Branch, Environmental Policy and Programs Division, Minerals Management Service, 381 Elden Street, Mail Stop 4310, Herndon, Virginia 22070,

telephone (703) 787–1717. All inquiries concerning the Socioeconomic Workshop should be addressed to Dr. Harry Luton, Environmental Studies Branch, at the same address and telephone number.

Dated: September 26, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–23812 Filed 10–2–91; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: Gettysburg National Military Park Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the first meeting of the Gettysburg National Military Park Advisory Commission.

DATES: October 24, 1991.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Holiday Inn, 516 Baltimore St., Gettysburg, Pennsylvania 17325.

TIME: 2:30–4:30 P.M.

FOR FURTHER INFORMATION CONTACT: Jose A. Cisneros, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Miltiary Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: September 24, 1991.

Joe R. Miller,

Acting Regional Director.

[FR Doc. 91–23841 Filed 10–2–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–303 (Sub 9X)]

Wisconsin Central Ltd.—Abandonment Exemption—In Ashland County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Wisconsin Central Ltd. of 1.01-miles of rail line between mileposts 434.49 and 435.50, in Ashland, Ashland County, WI, subject to standard labor protective, historic preservation, and environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 2, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 15, 1991, petitions to stay must be filed by October 21, 1991, and petitions for reconsideration must be filed by October 28, 1991. Requests for a public use condition must be filed by October 15, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–303 (Sub-No. 9X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,

and

(2) Petitioner's representative: Janet H. Gilbert, Wisconsin Central Ltd., P.O. Box 5062, Rosemont, IL 60017–5062.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

Decided: September 26, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sideny L. Strickland, Jr.,

Secretary.

[FR Doc. 91–23830 Filed 10–2–91; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification number, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202) 523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information

Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Employment and Training Administration.
Research Evaluation and Pilot Demonstration Projects Programs—Job Training for the Homeless Demonstration Program (JTHP).
1205–0299; ETA 9028; Quarterly.
State and local governments; Non-profit institutions.
21 respondents; 840 total hours; 10 hrs. per respondent; 1 form.

The information provided by this collection from grantees will permit DOL to meet Federal responsibilities for program administration, management and oversight; respond to public and Congressional inquiries; and insure that we have statutorily required information.

Extension

Employment Standards Administration.
Notice of final Payment or Suspension of Compensation Benefits.
1215–0024; LS–208.
On occasion.
Businesses or other for profit.
500 respondents; 8,500 total hours; .25 minutes per response; 1 form.
Report is used by insurance carriers and self-insured employers to report the payment of benefits under the Act.
OFCCP Recordkeeping/Reporting: Construction.
1215–0163.
Monthly and Annually.
State or local governments; Businesses or organizations.
34,943 respondents; 5,223,678 total hours; 11.6 hrs. per response.

Recordkeeping and reporting obligations incurred by Federal and Federally assisted construction contractors under Executive Order 12246, Section 503 of the Rehabilitation Act of 1973, and 38 U.S.C. 2012 are necessary to substantiate compliance with nondiscrimination and affirmative action requirements monitored by the Office of Federal Contract Compliance Programs.
OFFCP Recordkeeping/Reporting: Supply and Service.
1215–0072.
Annually.
State or local governments; Small businesses or organizations; Businesses or other for profit; Non-profit institutions.
61,420 respondents; 15,182,644 total hours; 11.4 hours per response.

Recordkeeping and reporting obligations incurred by Federal contractors/subcontractors under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and 38 U.S.C. 2012 are necessary to substantiate compliance with nondiscrimination and affirmative action requirements monitored by the Office of Federal Contract Compliance Programs. The Scheduling Letter portion of this clearance has been revised. However, this change does not affect the substance or method of collection.

Reinstatement

Employment and Training Administration.
Unemployment Compensation for Ex-servicemembers (UCX) Handbook 1205–0176; ETA 841, 842, and 843.

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 841	State or local governments	153,000	One-time	1½ minutes.
ETA 843	State or local governments	7,650	One-time	1 minute.
ETA 842	None		None	

3,953 total hours.

Federal law (5 U.S.C. 8521 et seq.) provides unemployment insurance protection, to former members of the Armed Forces (ex-servicemembers) and is referred to in abbreviated form as "UCX." The forms in chapter V through VIII of the UCX Handbook are used in connection with the provisions of this benefit assistance.

Signed at Washington DC this 27th day of September, 1991.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 91–23820 Filed 10–2–91; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 15, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 15, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 23rd day of September, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Addwest Mining, Inc. (wkrs)	Fort Stockton, TX	09/23/91	09/04/91	26,348	Rebuild sulfur plant.
Arrow Co. (wkrs)	Andalusia, AL	09/23/91	09/23/91	26,349	Shirts.
Belden and Blake Corp (wkrs)	Bradford, PA	09/23/91	09/09/91	26,350	Oil and gas.
Benchmark Geophysical Corp (wkrs)	Edmond, OK	09/23/91	08/29/91	26,351	Seismic data processing.
Carl Oil and Gas Co (wkrs)	Corpus Christi, TX	09/23/91	09/11/91	26,352	Crude oil, natural gas.
CF&I Steel Corp (USWA)	Pueblo, CO	09/23/91	09/06/91	26,353	Tubes, rails and wire products.
Chicago Pneumatic Tool Co IAMAW	Utica NY	09/23/91	09/10/91	26,354	Automotive air tools.
Crown Cork and Seal Co., Inc. USWA	Edison, NJ	09/23/91	09/10/91	26,355	Aluminum lids for cans.
Deans Mfg. Service (wkrs)	Okemah, OK	09/23/91	09/09/91	26,356	Flex circuit assemblies.
ESCO Corp (wkrs)	Portland, OR	09/23/91	09/10/91	26,357	Steel castings.
General Electric Co (wkrs)	Syracuse, NY	09/23/91	09/09/91	26,358	Cable wire and harnesses.
General Electric Corp IBEW	Saddle Brook, NJ	09/23/91	09/09/91	26,359	Service GE TV's.
Halliburton Services (wkrs)	Gillette, WY	09/23/91	09/05/91	26,360	Oilfield services.
Halliburton Services (wkrs)	Luling, TX	09/23/91	09/12/91	26,361	Oilfield services.
Halliburton Services (wkrs)	Casper, WY	09/23/91	09/05/91	26,362	Oilfield services.
Holiday Fashions ILGWU	Slatedale, PA	09/23/91	09/12/91	26,363	Ladies blouses.
Huron/St. Clair Mfg Co (wkrs)	Lake City, FL	09/23/91	08/29/91	26,364	Bright automotive trim.
L and M Radiator, Inc. (wkrs)	El Paso, TX 79925	09/23/91	09/11/91	26,365	Industrial radiators.
Midway Airlines, Inc. (wkrs)	Chicago, IL	09/23/91	09/10/91	26,366	Passenger airline.
Pathfinder Mines Corp (USWA)	Shirley Basin, WY	09/23/91	09/09/91	26,367	Uranium oxide.
Quanex Corp., Mi Seamless Tube Div. (USWA)	South Lyon, MI	09/23/91	09/06/91	26,368	Steel tubing.
Teledyne Wisconsin Motor (UAW)	West Allis, WI	09/23/91	09/13/91	26,369	Air-cooled gasoline engines.
The Procter and Gamble Mfg Co (wkrs)	Avenel, NJ	09/23/91	09/11/91	26,370	Perfumes and beauty care products.
The Procter and Gamble Mfg Co (wkrs)	Staten Island, NY	09/23/91	09/11/91	26,371	Household cleaning and laundery goods.
U.S. Shoe Corp, Hdqts (wkrs)	Cincinnati, OH	09/23/91	08/27/91	26,372	Womens' shoes.
Unisys Corp, Printed Circuit Oper. (wkrs)	Salt Lake City, UT	09/23/91	08/28/91	26,373	Printed wiring boards.
WellTech, Inc (wkrs)	Kalkaska, MI	09/23/91	09/10/91	26,374	Oilwell services.
WellTech, Inc. (wkrs)	Mt. Pleasant, MI	09/23/91	09/10/91	26,375	Oilwell services.
Witco/Richardson (URW)	Indianapolis, IN	09/23/91	09/08/91	26,376	Rubber battery covers and bushings.
Zwicker Knitting Mills ACTWU	Appleton, WI	09/23/91	09/04/91	26,377	Knitted headwear, handwear.
(Reopen) Eagle Shirtmakes, Inc. ACTWU	Mahanoy City, PA	09/23/91	09/21/90	25,028	Men's dress shirts.

[FR Doc. 91-23821 Filed 10-2-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,890]

W.R. Case & Sons Cutlery Co., Bradford, PA; Negative Determination on Reconsideration

By Order dated June 28, 1991, the United States Court of International Trade (USCIT) in *Former Employees of W.R. Case & Sons Cutlery Company* v. *U.S. Secretary of Labor* (USCIT 91-04-00282) remanded this case to the Department for further investigation.

Investigation findings on remand show that the subject firm entered Chapter 11 Reorganization proceedings in May 1990 and was sold in November 1990. W.R. Case went into bankruptcy proceedings because much of its assets were siphoned off by other affiliated companies. Accordingly, the loss of assets and bankruptcy proceedings would not provide a basis for a worker group certification.

Other findings show that although employment and the sale of knives at W R Case declined in the first 10 months of 1990 compared to the same period in 1989, increased imports did not contribute importantly to such declines. The "contributed importantly" test of Group Eligibility Requirements of the Trade Act is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Case's declining customers show that they either did not import or did not have increasing imports during the relevant time periods. Some customers commented that they decreased their purchases of knives from Case because of the instability of the company.

Reconsideration findings show that blade components purchased from Japan during the period applicable to the petition were for knives which accounted for a negligible portion of Case's total sales. Case did not produce the imported blade components during the period applicable to the petition. Further, the issue of components was addressed in the Department's earlier Notice of Negative Determination Regarding Application issued on February 20, 1991 and published in the Federal Register on March 5, 1991 (56 FR 9236).

Conclusion

After reconsideration, I affirm the original notice of negative determination to apply for adjustment assistance to former workers of W.R. Case & Sons Cutlery Company, Bradford, Pennsylvania.

Signed at Washington, DC, this 25th day of September 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-23822 Filed 10-2-91; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program Extended Benefits; Ending of Extended Benefit Period in the State of Alaska

This notice announces the ending of the Extended Benefit Period in the State of Alaska, effective on September 7, 1991.

Background

The Federal-State Extended Unemployment Compensation Act of

1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reached the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Alaska on February 2, 1991, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on August 17, 1991, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending September 7, 1991.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits, 20 CFR 615.13(c)(4).

Persons who wish information about their rights to Extended Benefits in the State named above would contact the nearest State employment service office in their locality.

Signed at Washington, DC on September 20, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-23823 Filed 10-2-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-83]

NASA Advisory Council (NAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Science and Applications Advisory Subcommittee.

DATES: October 21, 1991, 8 a.m. to 10 p.m.; October 22, 1991, 8 a.m. to 10 p.m.; and October 23, 1991, 1 p.m. to 3:30 p.m.

ADDRESSES: Holiday Inn Hotel, 7230 Engle Road, Middlebury, OH 44130.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code SN, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1570).

SUPPLEMENTARY INFORMATION: The Space Station Science and Applications Advisory Subcommittee (SSSAAS) reports to the Space Science and Applications Advisory Committee (SSAAC) and consults with the advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized.

It also advises the NASA Space Station Freedom Office on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to discuss the reports on telescience, attached payloads, and data issues. The Subcommittee is chaired by Dr. Robert J. Bayuzick and is composed of 19 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Monday, October 21

- 8 a.m.—Opening Remarks.
- 8:30 a.m.—Status and Review of Actions and Recommendations of the Subcommittee Summer Workshop.
- 9 a.m.—Status of Payload Traffic Model and Utilization Plan.
- 9:45 a.m.—Status of Payload Integration and Operations Responsibilities.
- 10:30 a.m.—Status Report on Microgravity Levels.
- 12:30 p.m.—Report on Recent Meetings of the International Forum on Scientific Uses of Space Station.
- 1:15 p.m.—Status of Tracking Data Relay Satellite System Availability.
- 2:15 p.m.—Plans for End-To-End Data Flow.
- 4 p.m.—Science Data Distribution and Archiving Plans.
- 4:30 p.m.—Planning for Data Management System Workshop and Utilization Workshop.
- 7:30 p.m.—Discussions on Data Issues.
- 10 p.m.—Adjourn.

Tuesday, October 22

- 8 a.m.—Status Report on U.S. Telescience Requirements.
- 8:30 a.m.—Status Report on U.S. Telescience Operations and Plans.
- 9 a.m.—Status Report on Partners' Telescience Plans.
- 10:30 a.m.—Space Station Freedom (SSF) Vibroacoustic Requirements and Implementation Plans.
- 11 a.m.—Payload Training Plans.
- 1 p.m.—NASA Biosafety Policies.
- 1:30 p.m.—SSF Program Biohazard Policy and Comparison with Spacelab Policy.
- 2:15 p.m.—Attached Payload Capabilities Status.
- 2:45 p.m.—Status and Plans for Selected Attached Payloads.
- 3:15 p.m.—Contamination Monitoring.
- 4:15 p.m.—Science Solicitation Plans.
- 7:30 p.m.—Splinter Group Discussions.
- 10 p.m.—Adjourn.

Wednesday, October 23

- 1 p.m.—Splinter Group Reports.
- 2:30 p.m.—Development of Subcommittee Recommendations.
- 3 p.m.—Discussion of Future Meetings.
- 3:30 p.m.—Adjourn.

Dated: September 27, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91–23815 Filed 10–2–91; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Chalienge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Challenge III Review Committee Section) to the National Council on the Arts will be held on October 22, 1991 from 9 a.m.–4:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. –10 a.m. and 3 p.m.–4:30 p.m. The topics will be opening remarks, policy discussion and FY 93 guidelines review.

The remaining portion of this meeting from 10 a.m.–3 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–23748 Filed 10–2–91; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chorus Section) to the National Council on the Arts will be held on October 22–23, 1991 from 9 a.m.–5:30 p.m. and October 24 from 9 a.m.–5 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 24 from 3 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on October 22–23 from 9 a.m.–5:30 p.m. and October 24 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–23749 Filed 10–2–91; 8:45 am]

BILLING CODE 7537–01–M

Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (New American Works Prescreening Section) to the National Council on the Arts will be held on October 22–24, 1991 from 9 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of September 23, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–23750 Filed 10–2–91; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8781]

Central Electricity Generating Board Exploration (Canada) Ltd.; Final Finding of No Significant Impact Regarding the Termination of Source Material License SUA–1403 Authorizing the Commercial Operation of the Leuenberger in Situ Leach Facility Located in Converse County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to terminate Source Material License SUA–1403.

2. Reasons for Final Finding of No Significant Impact

By letter dated August 22, 1991, Central Electricity Generating Board Exploration (Canada) Ltd. (CEGB) requested termination of Source Material License SUA–1403 which allowed them to proceed with operation activities at the in situ leach uranium recovery mine, the Leuenberger site. The Leuenberger site was initially authorized to operate under a Research and Development (R&D) license issued September 1983, to UNC Teton Exploration Drilling, Inc. (TETON). At the request of the licensee, the R&D license was terminated following publication of a FONSI in the **Federal Register.** Termination in accordance with title 10, Code of Federal Regulations, part 40, was authorized based upon the following:

(a) The licensee submitted a final Decommissioning Report and a Certificate of Disposition of Materials (NRC Form 314) in accordance with title 10, Code of Federal Regulations, part 40.42. Additional information was submitted September 29, 1986. The NRC inspected the Leuenberger site on June 17, 1986, and issued a report for the inspection findings dated July 3, 1986, which indicated the site was decommissioned in accordance with license requirements.

The decommissioning report included the results of gamma radiation exposure rate surveys taken before and after decontamination which indicated that all areas had been decontaminated to levels below the cleanup action level of 33μR/hr. A verification gamma exposure rate survey was performed on October 1, 1986, by the NRC. The results of this survey showed all measured values both within and outside the process building within the restricted area were less than 24μR/hr. The results of smear surveys taken in the process and generator building indicated all removable alpha activity was below the permissible limits for unrestricted release.

The completed NRC Form 314 showed all contaminated equipment and materials had been shipped from the Leuenberger site and transferred to two licensed facilities in accordance with the R&D Source Material License SUA–1373, License Condition No. 24. Trailers, trucks, and salvageable equipment were decontaminated and surveyed prior to release. The information for the equipment transfer and survey results is included in the decommissioning report. In addition, the results of surveys for all remaining structures are included in the decommissioning report.

(b) Four test patterns were operated in 1980 and 1981. Restoration and post-restoration monitoring of the patterns were completed and approved by the NRC in February 1983. The Wyoming Department of Environmental Quality (WDEQ) had previously approved the restoration activities by letter dated May 1982.

(c) Well abandonment was completed January 1986, and a report dated June 14, 1986, detailing the well abandonment was submitted to the Wyoming State Engineer's Office and the WDEQ—Land Quality Division. The WDEQ approved the well abandonment report by letter dated June 11, 1986. A site inspection was conducted by WDEQ on July 1, 1986, with no ensuing comments.

(d) Well field areas, evaporation ponds, and adjoining disturbed areas were decontaminated and reclaimed in accordance with SUA–1373, License Condition No. 38, and WDEQ permit requirements.

(e) A total of 67 soil samples were collected from well field, process building areas, evaporation pond areas, and other permit areas, and surveyed for radium–226. The results of the survey revealed radium–226 concentrations did not exceed the 5 pCi/g above background, as averaged over 100 meters squared, standard, as stipulated in title 10, Code of Federal Regulations, part 40. Analyses of comparable samples collected by the NRC on June 15, 1986, confirmed radium–226 concentrations were below the 10 CFR part 40 limit.

(f) Results of environmental air sampling conducted in conformance with SUA–1341, License Condition Nos. 29 and 37, indicated radon–222 concentrations at upwind and downwind boundary sites did not exceed 8.2E–10 uCi/ml (27 percent of unrestricted area Maximum Permissible Concentrations (MPC) stipulated in 10 CFR part 20).

(g) Results of inplant radon gas surveys conducted inside the process building during decommissioning showed radon gas concentrations did not exceed 8.1E–10 uCi/ml (27 percent of unrestricted area MPC).

Source Material License SUA–1373 was terminated in October 1986. Prior to this, in September 1983, the facility owner, TETON, was issued a commercial license, Source Material License SUA–1403. This license was transferred to CEGB in December 1985. Under the commercial license, the Leuenberger site has never been active. An inspection of the Leuenberger site performed September 23, 1991, confirmed that no new facilities or wells have been constructed. A gamma ray survey of the R&D process building, and the reclaimed well field and settling pond locations, indicates uniform background levels (15 to 16μR/hr) of gamma radiation. Based on NRC approval of the FONSI for termination of the R&D license, and the fact that the Leuenberger site did not undergo new construction and was never operated under the commercial license, Source Material License SUA–1403 may be terminated without any significant impact.

In consideration of this situation, the Director of the Uranium Recovery Field Office in accordance with 10 CFR part 51.35 is issuing a final finding of no significant impact. Concurrent with this finding, the Commission's Uranium Recovery Field Office will terminate Source Material License SUA–1403.

Dated at Denver, Colorado, this 25th day of September 1991.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 91–23825 Filed 10–2–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix R, section III.G and section III.M for the Peach Bottom Atomic Power Station, Units 2 and 3, located at the licensee's site in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the technical requirements of section III.G.2, appendix R to 10 CFR part 50 as follows:

(1) to the extent that the wall separating the individual Turbine Building Emergency Switchgear and Battery Rooms from each other and from an access corridor and two duct chases are constructed of concrete block with a fire resistance rating of only 2 hours;

(2) to the extent that fire barriers between the access corridor on

elevation 135 feet of the Turbine building and the 13KV switchgear area on elevation 116 feet of the Turbine building consists, in part, of two duct chases in two 4KV Emergency Switchgear Rooms, penetration fire stops and fire dampers within ducting inside the chase. The fire dampers and penetration stops are in different planes and different elevations. This configuration does not meet the requirements of section III.G.2 in that the intervening ducting between the fire dampers and penetration stops does not meet the required 3-hour fire rating; and

(3) to the extent that a ⅛-inch steel angle atop a 3-hour rated fire barrier between the Radwaste Centrifuge and Sample Tank Area and the Remote Shutdown Panel area compromises the fire protection capability of the 3-hour rated fire barrier.

The licensee would be exempted from the technical requirements of section III.M, appendix R to 10 CFR part 50 as follows:

(1) to the extent that electrical conduit fire barrier penetration seals in approximately 1300 applications have not been tested in their ability to withstand a 3-hour fire; and

(2) to the extent that seventeen normally energized 4KV bus ducts in the Turbine Building lack 3-hour rated penetration seals.

The exemption is in response to the licensee's request for NRC staff technical review and concurrence dated December 10, 1986.

The Need for the Proposed Action

The exemption from section III.G to allow present fire barrier configurations to not meet the specfic 3-hour fire barrier rating is needed in order to preclude extensive plant modifications that do not significantly increase plant fire protection.

The exemption from section III.M to allow present fire barrier cable conduits and 4KV bus ducting to not have 3-hour rated penetration seals is needed to avoid extensive penetration modifications that do not significantly increase plant fire protection.

Environmental Impact of the Proposed Actions

The proposed exemption will provide a degree of fire protection that is equivalent to that required by appendix R for the affected areas of the plants such that there is no increase in the risk of fires at these facilities. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there is no significant radiological impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely with the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated.

The principal altenative to the exemption would be to require rigid compliance with the applicable portions of section III.G and section III.M of the appendix R requirements. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action involves no use of resources not previously considered in the "Final Environmental Statement for the Peach Bottom Atomic Power Station, Units 2 and 3," dated April 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's request for NRC staff review dated December 10, 1986, which is available for public inspection at the Commission's Public Document room, 1717 H Street, NW., Washington, DC and at the Government Publication Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 26th day of September 1991.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–23826 Filed 10–2–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8857]

Power Resources, Inc.; Draft Finding of No Significant Impact Regarding the Expansion of Operations for Source Material License SUA–1511 Authorizing the Expansion of the Highland Uranium Project in Situ Leach Operations Located in Converse County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Finding of No Significant Impact.

1. Proposed Action

The proposed administrative action is to authorize expansion of the Highland Uranium Project operation by revision to Source Material License SUA–1511.

2. Reasons for Draft Finding of No Significant Impact

An environmental assessment for the expansion of the in situ leach uranium recovery site, the Highland Uranium Project (HUP), was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office (URFO), Region IV. The HUP is operated by Power Resources, Inc. (PRI). The environmental assessment performed by the Commission's staff evaluated potential onsite and offsite impacts due to radiological releases that may occur as a result of mining operations expansion. Documents used in preparing the assessment include the environmental assessment dated July 1987, for the existing in situ leach operations owned by PRI, the revised license application submitted by PRI with cover letter dated March 20, 1991, and operational data from the existing operation. The Final Environmental Impact Statement dated November 1978, and prepared by the Commission's staff for the initial Research and Development facility owned by EXXON Corporation was also referenced. Based on the review of these documents, the Commission has determined that no significant impacts will result from the proposed action, and therefore, an

addendum to the existing Environmental Impact Statement is not warranted.

The following statements support the draft Finding of No Significant Impact and summarize the project evaluation based on the documents described above.

A. The ground-water monitoring program to be employed has proven to effectively monitor ground water and provide early indication of potential impacts to ground-water quality at the existing, adjacent operation. Geophysical logs and aquifer test analyses for the existing mining operation indicate adequate stratigraphic confinement of the uranium-producing aquifer zone in that area, thereby indicating the ability to control mining solution migration. In addition, the target mining units for the proposed expansion are commonly greater than 300- to 400-feet below known useable aquifers and are separated from these more shallow aquifers by a thick section of relatively low permeable strata.

B. The ground-water restoration program comprising ground-water sweep, treatment and reinjection, and chemical reductant techniques has been shown to successfully restore ground water to premining baseline quality or to a same class-of-use condition.

C. The environmental monitoring program is designed to detect any radiological releases resulting from facility operations. Monitoring includes surveys of gaseous effluent, surface water, ground water, soil, and vegetation. Radiological effluents from the well field or plant are required to be within regulatory limits specified in 10 CFR part 20 and 40 CFR part 190. The MILDOS computer program run by the NRC for PRI's section 14 mining unit predicted that these limits would not be exceeded; operational monitoring data retrieved between 1987 and 1991, verified the computer model. Based on data submitted by the licensee in January 1989, this model shows that the regulatory limits will not be exceeded during operation of the proposed expansion facility.

D. Radioactive wastes are disposed of at a licensed facility in accordance with applicable Federal and State regulations. Any and all other wastes are also disposed of by Federal or State approved means.

E. Although there are no known significant impacts to wildlife, a 3-year monitoring program for potentially impacted wildlife has been developed by Federal and State agencies for the proposed HUP to determine if it is useful to continue monitoring after the initial study.

F. PRI is committed to perform a cultural survey to ensure there are no archaeological and historical artifacts on Federal land or in any areas scheduled for disturbance. To date, none have been identified.

G. Reclamation plans for the relatively small disturbed areas are adequate for restoring vegetation. There are no identified endangered plant or animal species. Furthermore, there is no suitable habitat for sensitive aquatic biota.

In accordance with 10 CFR part 51.33(A), the Director, Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**.

This finding, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Denver, Colorado, this 24th day of September, 1991.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director.

[FR Doc. 91–23827 Filed 10–2–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corporation and Jersey Central Power & Light Co. (Oyster Creek Nuclear Generating Station); Exemption

I.

The GPU Nuclear Corporation and Jersey Central Power & Light Company (GPUN/the licensee) are the holders of Facility Operating License No. DPR–16, which authorizes operation of the Oyster Creek Nuclear Generating Station (the facility) at steady state reactor core power levels not in excess of 1930 megawatts thermal. The license provides, among other things, that Oyster Creek Nuclear Generating Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor (BWR) located at the licensee's site in Ocean County, New Jersey.

II.

The ATWS rule (10 CFR 50.62, "Requirements for Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants") requires improvements in the design and operation of commercial nuclear power facilities to reduce the likelihood of failure to shut down the reactor following anticipated transients, and to mitigate the consequences of an ATWS event. The requirements for a boiling water reactor are to install an alternate rod injection (ARI) system, a standby liquid control system (SLCS), and to trip the reactor coolant recirculation pumps automatically under conditions indicative of an ATWS. The ARI system is to be diverse from the reactor trip system sensor output to the final actuation device. In the staff's Safety Evaluation dated November 4, 1988, on Oyster Creek compliance with the ATWS rule, the staff determined that in order for Oyster Creek to fully comply with the ATWS rule, the licensee should provide an ARI system with instrument components that are diverse from the reactor trip system. On August 11, 1989, the BWR Owners Group appealed the staff's position on required diversity of trip units in the ARI system from trip units in the reactor trip system (RTS) under the ATWS rule. On September 20, 1990, the NRC Executive Director for Operations decided in favor of the staff's position and the BWR Owner's Group's appeal was denied. On January 24, 1991, the NRC requested implementation of ARI diversity requirements. In his letter of September 20, 1990, to the Boiling Water Reactors Owners Group, the Executive Director of Operations indicated that it should be recognized, however, that this is a generic position and there could be reasons for making exceptions in specific cases.

III.

By letter dated June 28, 1991, the licensee requested an exemption from the diversity requirements of 10 CFR 50.62(c)(3) for the ARI system at Oyster Creek.

The staff has reviewed the licensee's request and the supporting technical information contained in the licensee's June 28, 1991 letter, and in a Safety Evaluation dated September 26, 1991. For the reasons set out in that evaluation, the staff agrees with GPU Nuclear Corporation and has concluded that the requested exemption is valid and should be granted.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to

the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(iii) are present, in that compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. Accordingly, the Commission hereby grants an exemption as described in section III above from the requirements of 10 CFR 50.62(c)(3).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the human environment (56 FR 48587).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 26th day of September 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–23828 Filed 10–2–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29736; File No. SR–MSRB–91–6]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to the Activities of Financial Advisors

September 26, 1991.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1991, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing amendments to Board rule G–23, concerning the activities of financial advisors, (hereafter referred to as "the proposed rule change"). The proposed rule change requires a dealer acting as financial advisor and intending to act as placement agent for an issue to meet the same disclosure and other requirements, set forth in rule G–23(d), as a dealer acting as financial advisor and intending to negotiate the underwriting.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G–23 establishes disclosure and other requirements for dealers that act as financial advisors to issuers of municipal securities.[1] The rule is designed principally to minimize the *prima facie* conflict of interest that exists when a municipal securities dealer acts as both financial advisor and underwriter with respect to the same issue.

Among other things, rule G–23 prohibits a dealer acting as financial advisor from acquiring a negotiated issue as principal, either alone or in a syndicate, or arranging for such acquisition by a person controlling, controlled by, or under common control with such dealer, unless certain requirements are met. In these instances, rule G–23(d)(i) requires the dealer (i) to terminate the financial advisory relationship with regard to the issue; (ii) at or before such termination, to disclose in writing to the issuer that there may be a conflict of interest in changing from the capacity of financial advisor to that of purchaser of the securities and to disclose the source and anticipated amount of all remuneration to the dealer with respect to the issue; (iii) at or after such termination, to obtain the express written consent of the issuer to the acquisition or participation in the purchase; and (iv) to obtain from the issuer a written acknowledgment of the receipt of these disclosures.

Currently, rule G–23(d) does not apply to a dealer that acts as both financial advisor and placement agent for a new negotiated issue.[2] The proposed rule change requires a dealer acting as financial advisor and intending to act as placement agent for an issue to meet the same requirements, set forth in rule G–23(d), as a dealer acting as financial advisor and intending to negotiate the underwriting. The Board believes that there is effectively no difference between the two activities [3] and that the disclosure and other requirements of rule G–23(d) should apply to minimize the potential conflict of interest that exists when a dealer acts as both financial advisor and placement agent with respect to the same issue.

A dealer acting as placement agent performs many of the same functions as an underwriter even though one is performed on a principal basis and the other on an agency basis. In both instances, the dealer negotiates the best available rate for the issuer. The compensation to the dealer is very similar whether it is a placement fee or an underwriting fee and, in larger deals, the placement agency fee may well be the equivalent of a negotiated underwriting spread.

The Board has determined that the execution of a placement agent agreement that sets forth the compensation for the placement agent will comply with the requirements of rule G–23(d)(i)(C), which requires the dealer to disclose to the issuer the source and anticipated amount of all remuneration to the dealer with respect to the issue, in addition to the basis of compensation for the financial advisory services rendered. In addition, the proposed rule change makes the customer disclosure provisions of rule G–23(g) applicable for a dealer acting as financial advisor and placement agent for an issue.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Act. Section 15B(b)(2)(C) requires in pertinent part that the Board's rules be designed—

[1] Rule G–23 does not apply to "independent" financial advisors, *i.e.*, those advisors that are not associated with a broker, dealer, or municipal securities dealer. The rule also does not apply when, in the course of acting as an underwriter, a municipal securities dealer renders financial advice to an issuer, including advice with respect to the structure, timing, terms, and other similar matters concerning a new issue of municipal securities.

[2] As noted above, however, if the dealer places the bonds with a person controlling, controlled by, or under common control with the dealer, rule G–23(d) would apply.

[3] Typically bank dealer financial advisors place issues of municipal revenue bonds because banking laws prohibit banks from underwriting such bonds.

To prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in municipal securities * * * and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on all participants in the municipal securities industry, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board solicited comments on the proposed rule change in an exposure draft published in October 1990. The Board received three comment letters on the exposure draft.

Only one commentator dealt substantively with the amendments. This commentator stated that there is no potential conflict of interest when a financial advisor serves as the placement agent. It noted that there is a difference when one acts as principal as an underwriter and when one acts as placement agent for an issuer. It stated that a placement agent takes no underwriting risk and merely serves as the agent of the issuer in negotiation with the ultimate investor. It noted that the financial advisor collects no money from the investor and is merely a conduit fulfilling, in the strictest sense, its agency role. It believes that, in serving the role as placement agent for an issuer, the financial advisor need not resign its position as financial advisor and that there is no conflict of interest in fulfilling the contractual obligation to the issuer.

This commentator also stated that placing the same requirements on placement agents and negotiated underwriters would eliminate the savings to an issuer, particularly with regard to small issues and short-term issues. It noted that it has been successful in acting as a placement agent in situations where, as financial advisor, it has been unable to find an underwriter with an interest in pursuing the transaction.

As noted above, the Board believes that there is effectively no difference between the two activities and that rule G–23 should apply to private placements as it applies to negotiated underwritings because of the potential conflict of interest of the dealer in changing its role from financial advisor to placement agent. The compensation to the dealer is very similar whether it is a placement fee or an underwriting fee and, in larger deals, the placement agency fee may well be the equivalent of a negotiated underwriting spread. The proposed rule change does not prohibit a dealer from placing an issue when it is the financial advisor for the issue, but it does require that the dealer terminate the financial advisory relationship with regard to the issue and make certain disclosures.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 24, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–93770 Filed 10–2–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29740; File No. SR-MSRB–91–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Customer Confirmation Disclosure

September 26, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 6, 1991, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in items I, II, and III, below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing proposed amendments to rule G–15(a), the Board's customer confirmation disclosure rule (hereafter referred to as "the proposed rule change"). The proposed rule change would allow dealers, as an alternative to confirmation disclosure of the source and amount of remuneration received from a party other than the customer in agency transactions, to note on the customer's confirmation that remuneration has been or will be received and that the source and amount of such remuneration is available upon written request by the customer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in item IV below. The Board has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G–15(a)(ii), on customer confirmations, requires a dealer

effecting a transaction as agent for the customer or as agent for both the customer and another person to note on the customer's confirmation (i) either the name of the person from whom the securities were purchased or to whom the securities were sold for the customer or a statement that this information will be furnished upon the request of the customer, and (ii) the source and amount of any commission or other remuneration received or to be received by the dealer in connection with the transaction.

The Board understands that for certain remarketing agreements, dealers may not be able to disclose the amount of the remuneration when that amount is not determined at the time of trade. This can occur, for example, when the dealer's remarketing fee, paid by the issuer, is based on a percentage of the issue's outstanding balance instead of on a per transaction basis. The Board believes that it is important for the dealer to disclose the basis of this fee, even if the exact amount is not yet determined. Thus, the Board has interpreted rule G–15(a)(ii) to allow dealers to disclose that there will be a fee and the basis of the fee. For example, the dealer would have to disclose a fee from the issuer of x% of the outstanding balance of the issue, payable quarterly.[1]

The amendments to rule G–15(a)(ii) would allow dealers, as an alternative to confirmation disclosure of the source and amount of remuneration received from a party other than the customer in agency transactions, to note on the customer's confirmation that remuneration has been or will be received and that the source and amount of such remuneration is available upon written request by the customer. This requirement would make the rule consistent with the requirements of SEC Rule 10b–10, the SEC's confirmation Rule. While Rule 10b–10 does not apply to municipal securities transactions, consistency with that Rule, whenever possible, would be useful for dealers. The amendments to rule G–15(a)(ii) also would require written requests by customers for information regarding the identity of the person from whom the securities were purchased or to whom the securities were sold. Their requirement would make the rule internally consistent.

(b) The Board has adopted these amendments to rule G–15 pursuant to section 15B(b)(2)(C) of the Act. Section 15B(b)(2)(C) requires, in pertinent part, that the Board's rules be designed:

> To promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will effect any burden on competition since it will apply equally to all participants in the municipal securities industry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board received comment letters from the following: Bank South, N.A., Citibank, First Chicago Capital Markets, Inc.

The commentators were supportive of the proposed amendments and raised additional issues for consideration. Bank South and Citibank support making rule G–15(a)(ii) consistent with SEC Rule 10b-10. Citibank and First Chicago note the problems in determining the amount of remuneration for each trade in remarketing programs. Citibank also states that the alternative, disclosure of the basis for determining the fee, would be difficult given the limited amount of space available on confirmations and notes the confusion that such disclosure may cause customers since it is remuneration the dealer receives from the issuer and not from the customer.

In addition to comments on the proposed amendments, Citibank questions a prior Board interpretation regarding the application of rule G–15(a)(ii). Previously, the Board has stated that, in an agency trade, if a dealer acts as the agent for another person, and not as agent for the customer, rule G–15(a)(ii) would not apply. Citibank notes that the disclosure contemplated by the proposed amendments should be applied to all investors. It believes that a "special relationship" is present in an agency transaction between a dealer and a customer, one that may equal or approach that of a fiduciary relationship. Citibank states that the "caveat emptor" exemption from disclosure under these circumstances is substantially without merit and may even prove to be problematical if relied on in a legal forum.

The dealer must determine in what capacity it acts in municipal securities transactions and must disclose this capacity on customer confirmations pursuant to rule G–15(a)(i)(M). If the dealer is acting as agent only for another person and not for the customer, as previously noted, then rule G–15(a)(ii) does not apply.

Finally, First Chicago states that rule G–15(a)(ii) also applies when a dealer privately places issues as agent. Thus, it believes that it is redundant to require the dealer to include the private placement fee on the confirmation (or to note that such remuneration has been received and will be provided to the customer, upon request) because such information already is included in the customer's private placement memorandum.[2]

First Chicago also believes that because the basis of any remarketing fee also would be included in the private placement memorandum, confirmation disclosure of the remarketing fee when the securities are remarketed is unnecessary. The Board previously has not granted exemptions to confirmation disclosure rules based on the availability of the information in official statements or private placement memoranda. Moreover, under the proposed amendments, the only notation required on the confirmation would be that a fee was received and that its source and amount are available upon written request. If the customer already possesses information about placement and remarketing fees, then that customer will not make a written request.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing.

[1] Situations involving both fixed and variable elements to the fee paid by an issuer would require the dealer to disclose the fixed amount as well as the basis for the variable amount.

[2] Board rule G–32(a)(ii) requires dealers to provide new issue customers with the amount of any fee received by the dealer as agent for the issuer in the distribution of the securities.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the Principal Office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 24, 1991.

For The Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-23771 Filed 10-2-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 1492]

Laredo, Texas; Application for Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing construction of a bridge across the Rio Grande River from the City of Laredo, Texas to Nuevo Laredo, Tamaulipas, Mexico.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 731, 33 U.S.C. 535 approved September 26, 1972).

As required by Executive Order 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding the application in writing by November 4, 1991, to Mr. Irwin Rubenstein, Border Coordinator, Office of Mexican Affairs, Room 4258, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of Mexican Affairs during normal business hours.

Any questions relating to this notice may be addressed to the Border Coordinator at the above address or by telephone, no. (202) 647-9894.

Dated: September 25, 1991.

Irwin Rubenstein,

Border Coordinator, Office of Mexican Affairs.

[FR Doc. 91-23817 Filed 10-2-91; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent to Prepare an Environmental Document and to Hold an Environmental Scoping Meeting for Kent County International Airport, Grand Rapids, MI

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice to hold a public scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an environmental document will be prepared and considered for development planned for the next 20-year time period at Kent County International Airport. To ensure that all significant issues related to the proposed action are identified, a public scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Community Planner, Federal Aviation Administration, Detroit Airports District Office, 8820 Beck Road, Willow Run Airport—East Side, Belleville, MI 48111, at (313) 487-7280.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Michigan Aeronautics Commission, Michigan Department of Transportation, and the Kent County Aeronautics Board, will prepare an Environmental Document for the scheduled development to occur at Kent County International Airport over the next 20 years. This development includes the construction of new and/or upgrading of airfield, terminal and support facilities.

1. Extension and realignment of the existing crosswind Runway 18/36 to 8,500 feet;

2. Extension of the existing Runway 8R/26L to 5,000 feet;

3. Construction of a new cargo facility;

4. Construction of new taxiways;

5. Construction of a perimeter road system;

6. Storm water drainage improvements;

7. Acquisition of property for airfield development including relocation under the Uniform Relocation Assistance and Real Property Acquisition Act;

8. Terminal building expansion;

9. Short term parking improvements;

10. Installation of Navigation Aids;

11. Wetland mitigation.

Also depicted on the proposed Airport Layout Plan (ALP) are three additional projects which will be evaluated but no environmental action will be undertaken at this time:

1. Construction of a new 7,000 foot Runway 8R/26L with conversion of the existing runway into a parallel taxiway;

2. Long term parking improvements;

3. Relocation of the Air Traffic Control Tower.

These projects are depicted to show the relationship and environmental impacts between the short and long term development program.

Comments and suggestions are invited from Federal, State, and Local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Copies of materials to be evaluated can be obtained by contacting the FAA informational contact listed above. Comments and suggestions may be mailed to the same address.

Public Scoping Meeting: To facilitate receipt of comments, two public scoping meetings will be held on Wednesday, November 6, 1991, in the International Room, located on the first floor of the Terminal Building at Kent County International Airport, Grand Rapids, MI. One meeting will be held at 10 a.m. for Federal and State Agencies and another at 2 p.m. for local agencies and other interested parties. If you are unable to attend, written comments and recommendations may be sent to the Detroit Airports District Office until December 6, 1991.

Issued in Belleville, Michigan, on September 24, 1991.

Peter A. Serini,

Manager, Detroit Airports District Office, FAA Great Lakes Region.

[FR Doc. 91-23780 Filed 10-2-91; 8:45 am]

BILLING CODE 4910-13-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1991, Public Law 101–516, signed into law by President George Bush on November 5, 1990, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Alabama Highway Department, Alabama	AL–03–0009–00	$3,000,000	09–23–91
Washington Metropolitan Area Transit Authority, Washington, DC-Maryland-Virginia	DC–03–0024–00	3,959,500	09–16–91
Regional Transit Authority, New Orleans, LA	LA–03–0049–00	10,000,200	09–18–91
Metropolitan Transportation Authority, New Yorк, NY-Northeastern New Jersey	NY–03–0264–00	57,817,749	09–08–91
Westchester Department of Transportation, New York, NY-Northeastern New Jersey	NY–03–0266–00	3,999,999	08–26–91

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Yolo County Transit Authority, Sacramento, CA	CA–90–X440–00	$167,898	08–02–91
Monterey-Salinas Transit, Seaside-Monterey, CA	CA–90–X442–00	1,696,791	08–22–91
Golden Gate Bridge Highway and Transportation District, San Francisco-Oakland, CA	CA–90–X444–00	10,588,796	08–10–91

Issued on: September 30, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91–23829 Filed 10–2–91; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

September 27, 1991.

Redelegation of Authority Pursuant to Treasury Directive No. 16–21

By virtue of the authority redelegated to me as Commissioner of the Financial Management Service, under Treasury Directive 16–21 dated September 22, 1986, I hereby redelegate to the Assistant Commissioner, Financial Information the authority to assign shares of stock which have been assigned to the Secretary and to perform any additional functions necessary to effectuate such management.

The Assistant Commissioner shall be responsible for referring to the Commissioner any matters on which action should be appropriately taken by the Commissioner.

The Assistant Commissioner may redelegate this authority, and it may be exercised in the individual capacity and under the individual title of each individual receiving such authority.

Russell D. Morris,

Commissioner.

[FR Doc. 91–23717 Filed 10–2–91; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 523–3826.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 12.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public

with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

O.G.C. Precedent Opinion 50–91

Question Presented: Can an original benefit determination wherein VA incorrectly identified the site of a disability for which service connection is now protected under the provisions of 38 U.S.C. 359 be corrected to reflect the actual site of the disability?

Held: The provisions of 38 U.S.C. 359 establish criteria for the protection of service connection decisions in force for ten or more years. Those criteria do not prohibit the redesignation of an existing service connected rating to accurately reflect the actual anatomical location of the injury or disease resulting in the veteran's disability, provided the redesignation does not result in the severance of service connection for the disability in question.

Effective Date: March 29, 1991.

O.G.C. Precedent Opinion 51–91

Questions Presented: A. Does 38 U.S.C. 906(d) preclude reimbursement of costs incurred in the purchase of a veteran's headstone when the actual purchase was made by a veteran's spouse prior to the veteran's death?

B. Do regulations implementing the provisions of section 906(d) preclude reimbursement for a headstone purchased prior to a veteran's death?

C. If the answer to either of the above is affirmative, is such a limitation consistent with the provisions of 38 U.S.C. 906(d) that were in effect prior to the enactment of Public Law 101–237?

Held: A. The provisions of what was formerly codified as 38 U.S.C. 906(d) do not prohibit reimbursement of costs incurred in the purchase of a veteran's headstone by a veteran's spouse prior to the veteran's death.

B. Since 38 CFR 3.1612 currently provides no interpretive guidance in the area of prepaid burial plans, the applicable provisions of the former 38 U.S.C. 906(d), relating to the reimbursement of cost paid prior to the veteran's death, control benefit decisions arising out of claims for headstone allowances occurring prior to the repeal of the allowance as part of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, 104 Stat. 1222 (effective November 1, 1990).

Effective Date: April 10, 1991.

O.G.C. Precedent Opinion 52–91

Question Presented: Are noneconomic elements of damages recovered pursuant to the Federal Tort Claims Act (FTCA) subject to administrative offset under 38 U.S.C. 351?

Held: Section 351 of 38, U.S.C. provides that where an individual is awarded a judgment against the United States or enters into a settlement or compromise under the Federal Tort Claims Act (FTCA) by reason of disability, aggravation, or death treated pursuant to section 351 as if it were service-connected for purposes of compensation paid by the Department of Veterans Affairs (VA), then no such benefits shall be paid to such individual by VA until the aggregate amount of benefits which would have been paid equals the total amount included in such award. Offset against VA benefits of both economic (loss of earning capacity) and noneconomic (*e.g.*, pain and suffering) elements of damage recoveries under the FTCA, 28 U.S.C. 2671–2680, is consistent with the terms of section 351 and its stated purpose. Accordingly, the full amount of damages recovered by an individual under the FTCA is subject to offset against benefits payable to that individual under section 351, regardless of whether those damages compensate for economic or noneconomic loss.

Effective Date: April 29, 1991.

O.G.C. Precedent Opinion 53–91

Questions Presented: A. When the Board of Veterans Appeals (BVA) pursuant to instructions from the United States Court of Veterans Appeals (COVA) enters a remand decision ordering additional development, must the agency of original jurisdiction, after completion of such development, furnish the appellant and his or her representative, if any, with a supplemental statement of the case (SSOC)?

B. If the agency of original jurisdiction is required to furnish the appellant and his or her representative, if any, with a SSOC, may either the appellant or, the representative waive this requirement?

Held: A. In cases in which the BVA, pursuant to instructions from COVA, remands a case to the agency of original jurisdiction, the necessity of furnishing the appellant and representative with a supplemental statement of the case, in the absence of specific instructions on this issue from COVA, is determined by application of 38 CFR 19.122.

B. If 38 CFR 19.122 requires that the agency of original jurisdiction furnish the appellant and representative with a supplemental statement of the case, either the appellant or representative may waive this procedural requirement. To be effective, such waiver should be in writing or formally entered on the record orally at the time of a hearing.

Effective Date: May 1, 1991.

O.G.C. Precedent Opinion 54–91

Question Presented: Should VA report waived loan guaranty debts to the Internal Revenue Service (IRS)?

Held: VA should comply with OMB Circular A–129 and report loan guaranty debt write-offs to IRS. Absent more specific guidance from IRS, VA should report all such write-offs unless VA reasonably believes there was not a valid and enforceable debt to write off. VA may want to consider requesting further guidance from IRS.

Effective Date: May 8, 1991.

O.G.C. Precedent Opinion 55–91

Question Presented: May the Veterans Administration extend financial assistance to the Virgin Islands for purposes of construction of a State home facility?

Held: The VA may extend financial assistance to the Virgin Islands to construct a State home facility. The Opinion of the General Counsel 3–77, dated October 12, 1976, reissued as O.G.C. Precedent 38–91, is hereby overruled.

Note: (This opinion, previously issued as Opinion of the General Counsel dated January 29, 1986, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

Effective Date: May 14, 1991.

O.G.C. Precedent Opinion 56–91

Questions Presented: a. May a new delimiting period be established for an eligible spouse's use of educational assistance entitlement under 35 U.S.C. when the veteran from whom such eligibility is derived ceases to be rated as permanently and totally disabled, but subsequently is again so rated?

b. If the spouse is entitled to a second period of eligibility, based on a subsequent rating decision reinstating the permanence of the veteran's total rating due to his service-connected disorders, are her separate periods of eligibility limited to an aggregate of 10 years under 38 CFR 21.3046?

Held: a. A new delimiting period shall be established for an eligible spouse's use of DEA entitlement when the veteran from whom such eligibility is derived ceases to be rated permanently

and totally disabled, but subsequently is again so rated.

b. In the case of multiple periods of eligibility, each such period shall be a full 10 years in duration, without aggregation.

Effective Date: June 3, 1991.

O.G.C. Precedent Opinion 57–91

Question Presented: Are burial benefits which are subject to the two-year limit for filing of claims under 38 U.S.C. 904 payable on behalf of an individual whose veteran status is based on service in the American Merchant Marine in Oceangoing Service, where the individual was buried subsequent to November 23, 1977, but prior to January 19, 1988, and the claim for burial benefits was submitted more than two years after the date of burial, but within two years after January 19, 1988?

Held: Claims for burial benefits for nonservice-connected deaths subject to the two-year filing limit imposed by 38 U.S.C. 904 may be paid on behalf of individuals whose veteran status is based on service in the American Merchant Marine in Oceangoing Service and who were buried after November 23, 1977 (the date of enactment of Pub. L. No. 95–202, the law authorizing recognition of Merchant Marine service for VA benefit purposes), but prior to January 19, 1988 (the date on which the Department of Defense made a determination as to recognition of the service of that group). However, such claims may only be paid if they were filed within two years of the veteran's burial.

Effective Date: May 31, 1991.

O.G.C. Precedent Opinion 58–91

Question Presented: Does the requirement of a marriage ceremony by a jurisdiction which does not recognize common-law marriage constitute a legal impediment to a purported marriage for purposes of establishing a deemed-valid marriage under 38 U.S.C. 103(a)?

Held: Section 103(a) of 38 U.S.C. provides in part that, where it is established that a claimant for gratuitous veterans' death benefits entered into a marriage with a veteran without knowledge of the existence of a legal impediment to that marriage, and thereafter cohabited with the veteran for one year or more immediately preceding the veteran's death, such marriage will be deemed to be valid. The requirement of a marriage ceremony by a jurisdiction which does not recognize common-law marriage constitutes a "legal impediment" to such a marriage for purposes of that section.

Effective Date: June 17, 1991.

O.G.C. Precedent Opinion 59–91

Question Presented: If, as a result of a felony conviction in the State of Florida, a veteran receives a sentence consisting of "community control with conditions" should his compensation benefits be subject to reduction pursuant to 38 U.S.C. 3113?

Held: The provisions of 38 U.S.C. 3113 requiring reduction of veterans' disability compensation to persons incarcerated in a Federal, state, or local penal institution for a period in excess of sixty days for conviction of a felony do not apply to beneficiaries sentenced to "community control" in Florida since, by the nature of the community-control program under Florida law, a person sentenced to "community control" would not be considered incarcerated and application of the compensation-reduction provisions to such a person would not further the objectives of section 3113.

Effective Date: June 24, 1991.

O.G.C. Precedent Opinion 60–91

Question Presented: Do the recent amendments to the Real Estate Settlement Procedures Act of 1974 made by the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625, apply to VA portfolio loans?

Held: Since VA portfolio loans are "federally related mortgage loans" within the meaning of the Real Estate Settlement Procedures Act of 1974 (RESPA), VA must comply with the amendments to RESPA made by the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625. This office cannot predict how a court would rule on the issue of sovereign immunity, which VA would likely claim, if VA were sued for an alleged violation of RESPA. VA would not be liable for penalties under RESPA because the Congress did not waive sovereign immunity with regard to such penalties.

Effective Date: June 26, 1991.

O.G.C. Precedent Opinion 61–91

Question Presented: Does a discharge under dishonorable conditions bar an individual from receiving gratuitous benefits under laws administered by the Department of Veterans Affairs (VA) based on a prior period of service which terminated under honorable conditions?

Held: Unless the Secretary of Veterans Affairs determines that an individual is guilty of an offense listed in 38 U.S.C. 6104 (formerly § 3504) (mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies) or the individual is convicted of an offense listed in 38 U.S.C. 6105 (formerly section 3505) (articles 94 (mutiny or sedition), 104 (aiding the enemy), and 106 (spying) of the Uniform Code of Military Justice; various provisions of 18 U.S.C. relating to espionage, treason, rebellion, sedition, subversive activities, and sabotage violations of the Atomic Energy Act of 1954 and the Internal Security Act of 1950), a discharge under dishonorable conditions does not bar that individual from receiving gratuitous benefits administered by the Department of Veterans Affairs, including burial in a national cemetery, based on a prior period of service which terminated under conditions other than dishonorable. However, if VA determines, subject to the severe limitations on application of 38 U.S.C. 6104 to U.S. residents and domiciliaries after September 1, 1959, under 38 U.S.C. 6103(d) (1) (formerly section 3503(d)(1)), that an individual is guilty of an offense listed in 38 U.S.C. 6104, or if an individual is convicted of an offense listed in 38 U.S.C. 6105, such individual is barred from receiving all accrued or future benefits regardless of whether the individual may have had a prior period of honorable service.

Effective Date: July 17, 1991.

O.G.C. Precedent Opinion 62–91

Question Presented: Would consideration of VA compensation benefits in computing the amount of a Federal tax credit constitute taxation in violation of 38 U.S.C. 5301(a) (formerly section 3101(a))?

Held: Consideration of VA compensation benefits by deducting them from the credit base in computing the amount of a Federal tax credit would not constitute taxation of those benefits in violation of 38 U.S.C. 5301(a), which exempts from taxation payments of benefits due or to become due under any law administered by the Department of Veterans Affairs.

Effective Date: July 26, 1991.

O.G.C. Precedent Opinion 63–91

Questions Presented: a. Is a noncareer psychology intern in pay status with the Department of Veterans Affairs who is rotated to a training assignment at a non-VA facility entitled to the protection afforded by 38 U.S.C. 4116 for alleged negligent acts occurring while working in the non-VA facility?

b. Is such an intern entitled to immunity under 28 U.S.C. 2679 for alleged negligent acts occurring while working in the non-VA facility?

c. When establishing training opportunities in non-VA facilities, how can the Government's exposure to suit be minimized?

Held: a. An intern in a VAMC Psychological Services Internship Program in pay status with the VA and rotated to a training assignment at a non-VA location would not be considered an employee exercising duties in or for the VHA while under the technical and professional supervision of the staff of the non-VA institution. Accordingly, such an intern would not be covered by the provisions of 38 U.S.C. 4116.

b. An intern in a VAMC Psychological Services Internship Program in pay status with the VA and rotated to a training assignment at a non-VA location would not be considered a Government employee while under the technical and professional supervision of the staff of the non-VA institution. Accordingly, such an intern would not be covered by the provisions of 28 U.S.C. 2679.

c. The Memorandum of Affiliation should require participating non-VA facilities to maintain adequate liability insurance, including coverage for interns serving a rotation at that facility, in connection with the VAMC Psychological Services Internship Program.

Effective Date: July 26, 1991.

O.G.C. Precedent Opinion 64–91

Questions Presented: a. Should the value of a property that a veteran previously occupied as a home but does not currently occupy due to the veteran's institutionalization be excluded from the estate computation under 38 U.S.C. 5505 (formerly section 3205) regardless of whether the structure is currently rented to or occupied by another?

b. Can a property qualify as a veteran's "home" under the provisions of 38 U.S.C. 5505 if the veteran does not actually occupy the property immediately upon acquisition?

c. (1) For purposes of estate valuation under 38 U.S.C. 5505, should VA exclude the value of property owned by the veteran which is contiguous to a veteran's dwelling and which may be used for commercial purposes or as a residence for other occupants of a multi-family dwelling?

(2) If not, should VA impute a commercial value to commercial property not currently being used for that purpose?

d. Should unsecured debts be taken into account when determining the value of a veteran's estate?

e. For purposes of 38 CFR 13.109(d)(4), which state exemption statutes should VA consider in determining the value of a veteran's estate where the veteran's residence is not in the same state as the court exercising jurisdiction over the veteran's conservatorship?

f. For purposes of 38 CFR 13.109(d), when a veteran receives income as beneficiary of a private trust fund, should the entire value of the trust fund be included in the veteran's estate?

Held: a. A property that is owned by a veteran but not currently occupied by the veteran due to the veteran's institutionalization may be excluded from the estate valuation under 38 U.S.C. 5505 (formerly section 3205; *see* Pub. L. No. 102–40, 402(b)(1), 105 Stat. 187, 238 (1991), for purposes of the limitation on compensation payments for certain imcompentent veterans without dependents where estates exceed $25,000, if the structure in question was the veteran's home prior to institutionalization, regardless of whether the property is currently rented or otherwise occupied by another.

b. The value of a residential structure recently purchased by a veteran may be excluded from the estate valuation under 38 U.S.C. 5505 even though the veteran is not currently residing in the home, if it can be expected that the veteran will occupy the structure as a home within a reasonable period of time.

c. (1) Those portions of a property which are subject to commercial use or occupancy by persons other than the veteran and his or her household, if any, may fall outside the scope of what is generally considered the veteran's home, and to the extent the property is divisible and portions of the property are subject to sale without requiring the veteran to sell the portion which constitutes his or her home, the commercial value of the salable portion of the property may be included in the estate computation for purposes of 38 U.S.C. 5505.

(2) VA may impute a commercial value to such property regardless of whether it is currently being used for that purpose, if some portion of the property is readily convertible to such use, that portion has an ascertainable commercial value, and commercial use of the portion of the property would not interfere with the veteran's enjoyment of the remainder of the property as a home.

d. VA may consider the veteran's legally enforceable unsecured debts in determining the value of the veteran's estate for purposes of 38 U.S.C. 5505.

e. The exemption laws of the state where the veteran's assets or property are situated are generally controlling in decisions concerning whether the value of particular property may be excluded from the veteran's estate pursuant to 38 CFR 13.109(d)(4), regardless of where the court exercising jurisdiction over the conservatorship is located.

f. Where a trust instrument vests legal title to assets in a trustee, the trust assets are not included in estate valuation for purposes of 38 CFR 13.109, unless those funds have been allocated and are available for the veteran's use.

Effective Date: August 9, 1991.

O.G.C. Precedent Opinion 65–91

Questions Presented: a. Could VA accept a claims form submitted by telefacsimile (fax) as a formal claim under 38 CFR 21.3030, 21.5030(c), 21.5730(a), and 21.7530(a)?

b. Does VA have the legal authority to treat a faxed submission of additional evidence in support of claim (other than documentary evidence), such as a statement of mitigating circumstances for a withdrawal from school, etc., as though the statement contained the original signature?

c. Does VA have the legal authority to accept documentary evidence in support of a claim such as a marriage certificate, birth certificate, divorce decree, etc., if these documents are faxed to VA?

d. Would our acceptance of faxed claims and documents jeopardize (1) either the claimant's right to due process should the claim be appealed; (2) VA's ability to recover in court an overpayment resulting from an erroneous statement made on a faxed document; or (3) the Federal Government's ability to prosecute the claimant for fraud should a fraudulent claim be submitted by fax?

e. If VA does not have the legal authority to accept any type of faxed claim or supporting document, or that to do so would jeopardize our areas of concern in paragraph d, which provisions of law or regulation would have to be amended in order for VA to accept faxed documents.

f. Does VA have the legal authority to accept submission of an original or reopened claim submitted by an electronic means other than fax?

g. Does VA have the legal authority to accept documentary evidence in support of a claim such as a marriage certificate, birth certificate, divorce decree, etc., if these documents are faxed to VA or submitted by an electronic means other than fax? Would such electronic documents meet the requirements of 38 CFR 3.204 if they were certified at the point of origin by a certified representative of a veterans service organization and this certification is also faxed?

h. Would an original claim received by electronic means other than by fax constitute a formal claim under 38 CFR

3.151 and 3.152? If not, can a claim submitted electronically be considered an informal claim under 38 CFR 3.155 protecting the date of claim but requiring follow-up by the original document?

i. What legal responsibility does the Department have in the event an individual alleges that a claim form or other evidence was sent but that a malfunction resulted in nonreceipt?

j. Would the fact that VA might be able to verify independently at a later date the information received either by fax or electronically have any bearing on VA's legal authority to accept the claim or supporting information?

k. Either the claimant, an accredited representative of a service organization, or another third party might submit the claim, supporting evidence, or other document. Would this have any bearing on VA's legal authority to accept this material?

Held: a. The intent of Congress in according VA authority to determine the "form" of an application for benefits is not entirely clear from the statutory language or the legislative history. Nevertheless, we believe the language used in 38 U.S.C. 210(c) is sufficiently broad as to empower the Secretary to prescribe, by regulation, both the format and media of transmission for benefit claims, as well as for the proofs and evidence needed to support them. Such media could include telefacsimile if use of that medium is reasonably related to the effective implementation of title 38 benefits law and not inconsistent therewith; will not unreasonably expose the Federal Treasury to erroneous or fraudulent claims; and complies with the requirements of relevant information and recordkeeping law and regulations. (Questions a. and f.)

b. Submissions of any documentary evidence, other than an application for benefits, but including additional evidence in support of an original or reopened claim, much as a birth certificate or marriage license, or an enrollment certification not otherwise required by law to be in writing for Federal Government purposes may be accepted by VA in electronic or fax form (except to the extent that existing statutes and regulations otherwise specifically provide and are not amended to conform). Such documents could meet the requirements of 38 CFR 3.204 whether or not accompanied by a faxed certification if VA so provides. (Questions b., c., and g.)

c. VA has discretionary authority to prescribe that a claim submitted by fax or other electronic process will be accepted as a formal claim under 38 CFR 21.3030, 21.5030(a), 21.5730(a), 21.7030(a), 21.7530(a), 3.151 and 3.152. (Questions a. and h.)

d. While acceptance or documents by fax or other electronic means is unlikely to jeopardize the claimant's right to due process, acceptance of documentary evidence in such form could adversely affect both VA's ability to recover an overpayment of benefits made in reliance upon such evidence and the Federal Government's ability to prosecute a claimant or third party for fraud for falsely certifying data. (Question d.)

e. Any provisions of law, including State law where relevant, which specifically mandate that a document shall be written or signed by a party thereto would have to be changed to allow VA to accept such documentation electronically or by fax; examples are certain insurance benefit requirements (see 38 U.S.C. 704(d) and 707) and deeds or mortgages for loan guaranty purposes which State law recognizes only in written or printed form. (Question e.)

f. If a document is sent to the VA electronically, but not received, responsibility for its nonreceipt only would fall upon VA if the failure to receive it was due to a malfunction as to which the VA had control, such as a defective fax receiving machine. However, even this risk should be eliminated by an appropriate legal requirement or agreement between the sender, such as a school, service organization, or claimant, and VA requiring the former to assume all responsibility. (Question i.)

g. The ability to independently verify documentary evidence transmitted by fax (other than an application document) has a bearing on the authority to use the data if subject to Computer Matching Act provisions. Otherwise, VA's legal authority to accept and use that form of evidence is limited by the degree to which the Secretary views the availability of such verification as being a factor in favor of accepting electronic or faxed transmission of the original's image for VA purposes. In other words, if a birth record is readily verifiable from official State records, a faxed copy may suffice for VA purposes, and VA may accept that form of evidence as a matter of policy. The decision is not a matter of legal authority but, rather, one of risk management. (Question j.)

h. The only apparent legal implications arising from the fact that the transmission of the documentary evidence may originate from either a veteran, accredited representative, or service organization are that (1) VA could only accept information from the source required by law and Department rules; and (2) the proper party submitting the evidence should be subject not only to the usual legal consequences of false and untimely submission but, also, to an agreement holding VA harmless from the consequences arising from use of electronic media in lieu of conventional media noted above. The fact that one category of submitting party or another is involved in no way absolves any such party from responsibility for its acts. (Question k.)

Effective date: August 15, 1991.

O.G.C. Precedent Opinion 66–91

Questions Presented: May the disability ratings assigned several separately ratable conditions of common etiology, none of which is evaluated at 100 percent, be combined so that a single rating of 100 percent can be established when the computation reaches 95 percent or more and may the remaining ratings for separately ratable conditions arising from the same etiology then be combined to achieve a 60 percent rating in order to establish entitlement to the special monthly compensation rate provided by 38 U.S.C. 1114(s) (formerly section 314(s))?

Held: The threshold requirement for entitlement under 38 U.S.C. 1114(s) is "a" disability rated as total. If a veteran does not have a single service-connected disability rated as total (100 percent), he cannot be eligible for compensation at the 38 U.S.C. 1114(s) rate.

Note: (This opinion, previously issued as a Digested Opinion of the General Counsel dated April 23, 1982, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and regulatory provisions.)

Effective date: August 15, 1991.

O.G.C. Precedent Opinion 67–91

Questions Presented: A. Whether 10 U.S.C. 1212(c) requires the Department of Veterans Affairs (VA) to deduct the "gross amount" of military disability severance pay (DSP) or the net amount of DSP after Federal taxes from any VA disability compensation payments the veteran receives for the same disability

B. Whether 38 U.S.C. 5301 (formerly section 3101) requires VA to take into account Federal tax paid on DSP in determining the amount which is subject to deduction under the provisions of 10 U.S.C. 1212(c).

Held: A. A veteran who receives military disability severance pay under 10 U.S.C. 1212(c) cannot receive VA disability compensation until VA has

recouped an amount equal to the "gross amount" of the disability severance pay.

B: The disability severance pay which is received by the veteran under 10 U.S.C. 1212(a) is not a benefit under VA laws, therefore, the disability severance pay is not exempt from taxation pursuant to 38 U.S.C. 5301(a).

Effective date: August 30, 1991.

Robert E. Coy,

Acting General Counsel.

[FR Doc. 91-23775 Filed 10-2-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 192
Thursday, October 3, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 46465 Thursday, September 12, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, October 1, 1991.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

CHANGE IN THE MEETING: The meeting scheduled for October 1, 1991 has been postponed until Tuesday, November 5, 1991 at 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–7100.

This Notice Issued October 1, 1991.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 91– 24016 Filed 10–1–91; 3:59 pm]

BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b], notice is hereby given that at 2:37 p.m. on Friday, September 27, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to certain financial institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: September 30, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–23923 Filed 10–1–91; 9:35 am]

BILLING CODE 6714–0–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 8, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 10, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Final Audit Report—Dukakis for President Committee
Advisory Opinion 1991–31: Porter Goss Committee
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–24010 Filed 10–1–91; 3:38 pm]

BILLING CODE 6715–01–M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Tuesday, October 8, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of the 1992 budget for the Office of Employee Benefits.
2. Administrative changes to the Pension, Thrift, and Long-term Disability Plans of the Federal Reserve System.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–23942 Filed 10–1–91; 10:34 am]

BILLING CODE 6210–01–M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Tuesday, October 8, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; and (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement of such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific items include: 1992 Reserve Bank early retirement proposal.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 1, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–23943 Filed 10–1–91; 10:34 am]

BILLING CODE 6210–01–M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting and Forum

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. This notice also describes the functions of the National Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Pub. L. 94–409).

DATES:

Quarterly Meeting

November 4, 1991, Committee Meetings, 9:00 a.m. to 12:00 noon
November 4, 1991, 1:30 p.m. to 5:00 p.m.
November 5, 1991, 8:30 a.m. to 5:00 p.m.

Forum on disabilities issues relating to Native Americans and rural areas.

November 6, 1991, 8:30 a.m. to 12:00 noon

LOCATION: The Waterford Hotel, 6300 Waterford Boulevard, Oklahoma City, Oklahoma 73118, (405) 848–4782.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, D.C. 20591, (202) 267–3846, TDD: (202) 267–3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95–602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law 98–221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People with Disabilities.

The quarterly meeting of the National Council shall be open to the Public. The proposed agenda includes:

Report from Chairperson and Executive Director
Update on NIDRR
Update on the implementation of the Americans with Disabilities Act
Update on research policy studies: education; technology; and health insurance
Prevention Update
Employment Roundtable Discussion
Committee Meetings/Committee Reports
Unfinished Business
New Business
Announcements
Adjournment
Forum on disability issues relating to Native Americans and rural areas

Record shall be kept of all National Council proceedings and shall be available after the meeting for the public inspection at the National Council on Disability.

Signed at Washington, DC on October 1, 1991.

Ethel D. Briggs,

Executive Director.

[FR Doc. 91–23926 Filed 10–1–91; 8:45 am]

BILLING CODE 6820–SS–M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, October 16, 1991.

PLACE: Hearing Room, Suite 850, 1425 K. Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of Board actions taken by notation voting during the months of August and September, 1991;
2. Mediator communications;
3. Final text of NMB simultaneous service procedures;
4. Participants' designation of representatives (notices of appearance) in NMB representation cases;
5. Obtaining employee signature samples with list of potential eligible voters;
6. Eligibility of arbitrators for retention on the NMB's roster of arbitrators;
7. Delegation Order for NMB arbitration activities; and
8. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523–5920.

Date of Notice: September 30, 1991.

William A. Gill, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 91–24007 Filed 10–1–91 3:16 pm]

BILLING CODE 7550–01–M

Corrections

Federal Register
Vol. 56, No. 192
Thursday, October 3, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

Correction

In rule document 91-10439 beginning on page 20144 in the issue of Thursday, May 2, 1991, on page 20145, in the third column, in the file line at the end of the document, "FR Doc. 91–0439" should read "FR Doc. 91–10439".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 422

RIN 0960-AC67

Social Security Number Required for Receipt of Social Security Benefits

Correction

In rule document 91-20022 beginning on page 41788, in the issue of Friday, August 23, 1991, make the following correction:

On page 41789, in the first column, in the first full paragraph, in the sixth line, "if" should read "is".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-456, STN 50-457, STN 50-454 and STN 40-455]

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

Correction

In notice document 91-6589 beginning on page 11795 in the issue of Wednesday, March 20, 1991, in the third column, in the file line at the end of the document, "FR Doc. 91-6586" should read "FR Doc. 91-6589".

BILLING CODE 1505-01-D

federal register

Thursday
October 3, 1991

Part II

Department of Justice

Office of Justice Programs

28 CFR Part 32

Proposed Revision of the Regulations for the Public Safety Officers' Benefits Program; Proposed Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 32

Proposed Revision of the Regulations for the Public Safety Officers' Benefits Program

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Public Safety Officers' Benefits Office, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The regulations covering public safety officers' death benefits (28 CFR part 32) and the appendix to those regulations are being revised to comply with the statutory amendments to the Public Safety Officers' Benefits (PSOB) Act (the "Act"). The revisions to the regulations will implement these statutory amendments which provide a lump sum benefit to Federal, State and local public safety officers who become permanently and totally disabled as the direct result of a catastrophic personal injury received in the line of duty.

DATES: Comments must be received on or before 5 p.m. e.d.t., November 4, 1991.

ADDRESSES: Comments should be sent to: Director, Public Safety Officers' Benefits Office, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: William F. Powers, Director, Public Safety Officers' Benefits Office, 633 Indiana Avenue, NW., Washington, DC 20531. Telephone (202) 307–0635.

SUPPLEMENTARY INFORMATION: Title XIII of Public Law 101–647, 104 Stat. 4834–35, amends section 1201 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3796–3796c, to provide benefits to public safety officers who have become permanently and totally disabled as the direct result of a catastrophic personal injury sustained in the line of duty. Catastrophic injury is defined to mean "consequences of an injury that permanently prevent an individual from performing any gainful work." Section 1301(c), Public Law 101–647, 104 Stat. 4834. Thus, a Federal, State or local public safety officer injured in the line of duty who is permanently prevented from performing any gainful work is, by statutory definition, permanently and totally disabled.

In its administration of the disability program, the Public Safety Officers' Benefits Office (the "Office") will examine and validate the following prerequisite disability certifications *prior to acceptance* of a claim for determination of benefits eligibility under the statute, regulations and policies of the PSOB disability program. The Office's validation of the listed disability certifications, therefore, is prerequisite to initiation of eligibility determination procedures and the award or denial of the prescribed PSOB disability benefit. Accordingly, one of the following must be received by the Office before validation can occur:

a. The employing agency's official, certified award to the claimant public safety officer of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as specified in 28 CFR 32.2 (p)(1); or

b. If the employing agency does not itself make such disability awards, then an official, certified award to the claimant public safety officer by the cognizant judicial, political or administrative agency or body of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as specified in § 32.2 (p)(2).

Following its review and validation of a public safety officer's prerequisite permanent and total disability as specified in the cited certifications, the Office will execute and complete its final disability benefits eligibility analysis and findings in accordance with the Act and its implementing regulations.

To determine whether or not a public safety officer will be unable permanently to perform any "gainful work" as defined in § 32.2(q), medical experts designated by the Office will examine a claimant public safety officer's "residual functional capacity" as defined in 28 CFR 32.2(r). Residual functional capacity is what a disabled public safety officer can still do despite limitations imposed by a disability.

Residual functional capacity is a medical determination to be made by the Office's designated medical experts. The medical determination will be based on examination of prerequisite disability certifications as specified in 28 CFR 32.2 (p) (1) and (2), and examination by these medical experts of any additional case specific medical documentation necessary to a medical assessment and determination of residual functional capacity.

If these medical experts determine that the level of a public safety officer's residual functional capacity permanently will prevent that individual from performing any gainful work, the Office will make a finding of permanent and total disability and award the prescribed disability benefit to the claimant. If the Office's medical experts determine that the level of a public safety officer's residual functional capacity will not permanently prevent that individual from performing any gainful work, the Office will make a finding of ineligibility for the prescribed disability payment.

If the Office's medical experts are unable to make a definitive determination as to whether or not a public safety officer's residual functional capacity will prevent that individual permanently from performing any gainful work, the Office will examine, in addition to the findings of its medical experts, a disabled public safety officer's "age," "education" and "work experience" as specified and defined in 28 CFR 32.2 (s), (t) and (u) to assess residual functional capacity and to determine whether or not the public safety officer permanently will be prevented from performing any gainful work.

To ensure accurate, timely and systematic review and determination of disability claims, the existing PSOB death benefit regulations have been amended where necessary to accommodate definitions and procedures essential to the administration of the disability program. The existing regulations were first published on May 6, 1977. Since that time, the Office has awarded approximately $185 million to eligible beneficiaries in 3,100 line-of-duty deaths.

That extended experience and the existing regulations have facilitated development of the disability program and its implementing regulations. For example, § 32.3 has been amended to include permanently and totally disabled public safety officers as eligible recipients of the prescribed benefits payment. Additionally, disability benefits are included in references to the disqualifying conditions specified in § 32.6–§ 32.9.

Additional payment conditions are delineated at 32.18(c). This regulation articulates a statutory prohibition on death benefit payments if a decedent public safety officer had been a recipient of a PSOB disability award.

The amended regulations at § 32.20(c) ensure adequate time for a claimant to file for the disability benefit. Where, for example, eligible beneficiaries may file for death benefits for up to 1 year following a public safety officer's death, disability applicants may file for up to one year following receipt of the required prerequisite disability certification.

This standard recognizes that such certification will be awarded at some

substantial time subsequent to the injury that caused the disability. A disability claimant, therefore, will have a full year to apply for the PSOB benefit after having received the qualifying disability certification as specified in § 32.2(p) (1) and (2).

Similarly, a number of the definitions in § 32.2 have been amended to ensure achievement of the disability amendment's legislative objectives and to implement the functional procedures essential to program administration. For example, § 32.2(d) now defines "direct" or "proximate" in addition to the existing definition for "direct and proximate," while § 32.2(e) now defines "injury" as well as the existing definition for "personal injury."

Definitions unique to the disability program are included throughout § 32.2. For example, § 32.2(f) adheres precisely to the statutory definition of "catastrophic injury," while "permanent and total disability," "gainful work," "residual functional capacity," "education" and "work experience" are defined at § 32.2(h), (g), (r), (t) and (u) respectively.

Finally, § 32.24 has been amended to conform the Office's appeal procedures to denials of disability claims. Accordingly, a public safety officer denied disability benefits may request reconsideration of the denial decision, within 30 days after notification of benefits ineligibility.

As with a death benefits appeal, an oral appeal hearing will be scheduled within 60 day of the reconsideration request, and a new benefits adjudication will be made in accordance with the regulatory procedures specified in § 32.24 (a) through (i).

Executive Order 12291

These regulations are not a "major rule" as defined by section 1(b) of Executive Order No. 12291, 3 CFR part 127 (1981), because they do not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

These regulations are not a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. These regulations, if promulgated, will not have a "significant" economic impact on a substantial number of small "entities," as defined by the Regulatory Flexibility Act.

Paperwork Reduction Act

The collection of information requirements contained in the proposed regulation have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 32

Administrative practice and procedure.

For the reasons set out in the preamble, title 28, part 32 of the Code of Federal Regulations is proposed to be revised as follows:

PART 32—PUBLIC SAFETY OFFICER'S DEATH AND DISABILITY BENEFITS

Authority: The Act is part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.*, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, Pub. L. 98—473, Pub. L. 99–570, Pub. L. 99–591, Pub. L. 100–690 and Pub. L. 101–647.

Subpart A—Introduction

§ 32.1 Purpose.

The purpose of this regulation is to implement the Public Safety Officers' Benefits Act of 1976, as amended, which authorizes the Bureau of Justice Assistance, Office of Justice Programs, to pay a benefit of $100,000, adjusted in accordance with § 32.3(b), to specified survivors of public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty, and to claimant public safety officers found to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty. The Act also authorizes funds to establish national programs to assist the families of public safety officers who have died in the line of duty. (The Act is part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, et seq., as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96—157, Pub. L. 98–473, Pub. L. 99–570, Pub. L. 99–591, Pub. L. 100–690 and Pub. L. 101–647).

§ 32.2 Definitions.

(a) *The Act* means the Public Safety Officer's Benefits Act of 1976, 42 U.S.C. 3796, et seq., Public Law 94–430, 90 Stat. 1346 [September 29, 1976], as amended.

(b)(1) *Bureau* means the Bureau of Justice Assistance of the Office of Justice Programs (hereinafter referred to as the Bureau of BJA);

(2) *PSOB* means the Public Safety Officers' Benefits Program of the Bureau of Justice Assistance.

(c)(1) *Line of duty* means any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires, and;

(2) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule regulation, condition of employment or service, or law to perform.

(d) *Direct and proximate, direct,* or *proximate* mean that the antecedent event is a substantial factor in the result.

(e) *Personal injury* or *injury* mean any traumatic injury, as well as diseases which are caused by or result from such an injury, but not occupational diseases.

(f) *Catastrophic injury* means consequences of an injury that permanently prevent an individual from performing any gainful work.

(g) *Traumatic injury* means a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

(h) *Permanent and total disability* means medically determinable consequences of a catastrophic, line-of-duty injury that permanently prevent a former public safety officer from performing any gainful work.

(i) *Occupational disease* means a disease which routinely constitutes a special hazard in, or is commonly regarded as a concomitant of the officer's occupation.

(j) *Public safety officer* means any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter, rescue squad member or ambulance crew member.

(k) *Public agency* means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, department, agency, or instrumentality of any of the foregoing.

(l) *Public employee* means an employee of a public agency.

(m) *Law enforcement officer* means any individual involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal law, including but not limited to police, corrections, probation, parole, and judicial officers.

(n) *Firefighter* Includes any individual serving as an officially-recognized or designated member of a legally organized volunteer fire department.

(o) *Rescue squad or ambulance crew member* means an officially recognized or designated employee or member of a rescue squad or ambulance crew.

(p) *Prerequisite disability certification* means:

(1) The employing agency's official, certified award to the claimant public safety officer of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury sustained in the line of duty; or

(2) If the employing agency does not itself make such disability awards, then an official, certified award to the claimant public safety officer by the cognizant judicial, political or administrative agency or body of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury sustained in the line of duty.

(q) *Gainful work* means work activity that is both substantial and gainful.

(l) *Substantial work activity* means work activity that involves doing significant physical or mental activities. Work may be substantial even if it is done on a part-time basis or if the public safety officer does less, gets paid less, or has less responsibility than when he or she was a member of the former employing public safety agency.

(2) *Gainful work activity* means work activity that is done for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized or pay is received.

(r) *Residual functional capacity* means that which a former public safety officer can still do despite limitations imposed by a disability. Residual functional capacity is a medical assessment, a determination to be made by the Office's medical experts. Such medical determination will be based on examination of prerequisite disability certifications as specified in 28 CFR 32.2 (p) (1) and (2), and by examination of any additional case specific medical and other relevant documentation necessary to a medical assessment and determination of residual functional capacity.

(s) *Age* means a former public safety officer's chronological age, and the extent to which that individual's age affects his or her ability to adapt to a new work situation or to do work in competition with others. PSOB will evaluate age in the context of residual functional capacity within the following general parameters:

(1) *Youthful* means that a former public safety officer under age 50 will generally be considered able to adapt to a new work activity and environment.

(2) *Early middle age* means that a former public safety officer, between age 50 and age 59, will generally be considered to experience significant difficulty in adapting to a new work activity and environment.

(3) *Middle and advanced age* means that a former public safety officer age 60 or over will generally be considered to experience substantial difficulty in adapting to a new work activity or environment.

(t) *Education* means primarily the level and content of a former public safety officer's formal schooling, including vocational training. Education also includes completion of in-service training seminars and educational programs while a member of the former employing public safety agency or while formerly employed.

(u) *Work experience* means the skills and abilities acquired by the former public safety officer before, during, and following service in the former public safety agency, suitable to use in adapting to a new work activity and environment.

(v) *Child* means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(1) Eighteen years of age or under;

(2) Over eighteen years of age and a student, as defined in section 8101 of title 5, United States Code; or

(3) Over eighteen years of age and incapable of self support because of physical or mental disability.

(w) *Stepchild* means a child of the officer's spouse who was living with, dependent for support on, or otherwise in a parent-child relationship, as set forth in § 32.13(b) of the regulations, with the officer at the time of the officer's death. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural or adoptive parent.

(x) *Student* means an individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(1) A school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(2) A school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

(3) A school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited for credit on the same basis as if transferred from an institution so accredited; or

(4) An additional type of educational or training institution as defined by the Secretary of Labor.

An individual is deemed to be a student during an interim between school years if the interim is not more than 4 months and if the student shows to the satisfaction of the Bureau, that the student intends to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Bureau, the student is prevented by factors beyond the student's control from pursuing the student's education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(y) *Spouse* means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

(z) *Dependent* means any individual who was substantially reliant for support upon the income of the deceased public safety officer.

(a)(a) *Intoxication* means a disturbance of mental or physical faculties:

(1) Resulting from the introduction of alcohol into the body as evidenced by

(i) A blood alcohol level of .20 per centum or greater or

(ii) A blood alcohol level of at least .10 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to the officer's death or catastrophic personal injury which resulted in permanent and total disability; or

(2) Resulting from drugs or other substances in the body.

(b)(b) *Rescue* means the provision of first response emergency medical treatment, transportation of persons in medical distress and under emergency conditions to medical care facilities, or search and rescue assistance in locating and extracting from danger persons lost, missing, or in imminent danger of bodily harm.

(c)(c) *Support* means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for maintenance of the person supported.

Subpart B—Officers Covered

§ 32.3 Coverage.

(a) When the Bureau determines under regulations issued pursuant to this part, that a public safety officer, as defined in § 32.2(h), has died or become permanently and totally disabled as the direct and proximate result of an injury sustained in the line of duty, the Bureau shall pay a benefit of $100,000, adjusted in accordance with § 32.3(b) or (c), subject to the conditions set forth in § 32.6. Payment of death benefits shall be made in the order specified in § 32.10.

(b) For the death benefit program, on October 1 of each fiscal year after October 15, 1988, the Bureau shall adjust the level of the death benefit payable immediately before such October 1 under paragraph (a) of this section, to reflect the annual percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, occurring in the 1-year period ending on June 1 immediately preceding such October 1.

(c) For the disability benefit program, the annual cost of living adjustment shall be made in accordance with the effective date of the enactment of this program, viz. November 29, 1990.

(d) The amount payable under paragraph (a) of this section with respect to the death or permanent and total disability of a public safety officer shall be the amount payable under paragraph (b) or (c) of this section as of the date of death or permanent and total disability of such officer, as the case may be.

§ 32.4 Reasonable doubt of coverage.

The Bureau shall resolve any reasonable doubt arising from the circumstances of the officer's death or permanent and total disability in favor of payment of the death or disability benefit.

§ 32.5 Findings of State, local, and Federal agencies.

The Bureau will give substantial weight to the evidence and findings of fact presented by State, local, and Federal administrative and investigative agencies. The Bureau will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Bureau with a rational basis for a decision on a material element of eligibility.

§ 32.6 Conditions on payment.

(a) No benefit shall be paid—

(1) If the death or permanent and total disability was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about the officer's death or injury;

(2) If the public safety officer was voluntarily intoxicated at the time of the officer's death or catastrophic personal injury;

(3) If the public safety officer was performing the officer's duties in a grossly negligent manner at the time of the officer's death or catastrophic personal injury;

(4) To any individual who would otherwise be entitled to a benefit under this part if such individual's actions were a substantial contributing factor to the death of the public safety officer; or

(5) To any individual employed in a capacity other than a civilian capacity.

(b) The Act applies to state and local public safety officers killed in the line of duty on or after September 29, 1976; federal public safety officers killed on or after October 12, 1984; rescue squad or public emergency employees killed in the line of duty on or after October 15, 1986; and to each of these classes of officers permanently and totally disabled as a result of a catastrophic personal injury received in the line of duty on or after November 29, 1990.

§ 32.7 Intentional misconduct of the officer.

The Bureau will consider at least the following factors in determining whether death or permanent and total disability was caused by the intentional misconduct of the officer:

(a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws; and

(1) Whether the officer knew the conduct was prohibited an understood its import;

(2) Whether there was a reasonable excuse for the violation; or

(3) Whether the rule violated is habitually observed and enforced;

(b) Whether the officer had previously engaged in similar misconduct;

(c) Whether the officer's intentional misconduct was a substantial factor in the officer's death or permanent and total disability; and

(d) Whether there was an intervening force which would have independently caused the officer's death or permanent and total disability and which would not otherwise prohibit payment of a benefit pursuant to these regulations.

§ 32.8 Intention to bring about death or permanent and total disability.

The Bureau will consider at least the following factors in determining whether the officer intended to bring about the officer's own death or injury:

(a) Whether the death or permanent and total disability was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death or injury;

(b) Whether the officer had a prior history of attempted suicide or attempts to cause physical incapacitation;

(c) Whether the officer's intent to bring about the officer's death or injury was a substantial factor in the officer's death or permanent and total disability; and

(d) The existence of an intervening force or action which would have independently caused the officer's death or permanent and total disability and which would not otherwise prohibit payment of a benefit pursuant to these regulations.

§ 32.9 Voluntary intoxication.

The Bureau will apply the following evidentiary factors in cases in which voluntary intoxication is at issue in an officer's death or permanent and total disability.

(a) The primary factor in determining intoxication at the time the injury occurred, from which death or permanent and total disability resulted, is the blood alcohol level, including a post-mortem blood alcohol level in the case of a death.

(1) Benefits will be denied if a deceased or permanently and totally disabled public safety officer had a blood alcohol level of .20 per centum or greater; or

(2) Benefits will be denied if a deceased or permanently and totally disabled public safety officer had a blood alcohol level of at least .10 per centum but less than .20 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to death or the receipt of a catastrophic personal injury.

(b) Convincing evidence includes, but is not limited to: Affidavits or investigative reports demonstrating that the deceased or permanently and totally disabled public safety officer's speech, movement, language, emotion, and judgment were normal (for the officer) immediately prior to the injury which caused the death or the permanent and total disability.

(c) In determining whether an officer's intoxication was voluntary, the Bureau will consider:

(1) Whether, and to what extent, the officer had a prior history of voluntary intoxication while in the line of duty;

(2) Whether and to what degree the officer had previously used the intoxicant in question; and

(3) Whether the intoxicant was prescribed medically and was taken within the prescribed dosage.

Subpart C—Beneficiaries

§ 32.10 Order of priority.

(a) When the Bureau has determined that a death benefit may be paid according to the provisions of subpart B of this part and § 32.11 of subpart C of this part, a benefit of $100,000, adjusted in accordance with § 32.3(b), shall be paid in the following order of precedence:

(1) If there is no surviving child of such officer, to the surviving spouse of such officer;

(2) If there are a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal share, and one-half to the surviving spouse;

(3) If there is no surviving spouse, to the surviving child or children of such officer in equal shares; or

(4) If none of the above, to the surviving parent, or to the surviving parents in equal shares.

(b) If no one qualifies as provided in paragraph (a) of this section, no benefit shall be paid.

§ 32.11 Contributing factors to death.

(a) No death benefit shall be paid to any person who would otherwise be entitled to a death benefit under this part if such person's intentional actions were a substantial contributing factor to the death of the public safety officer.

(b) When a potential beneficiary is denied death benefits under paragraph (a), the benefits shall be paid to the remaining eligible survivors, if any, of the officer as if the potential beneficiary denied death benefits did not survive the officer.

§ 32.12 Determination of relationship of spouse.

(a) Marriage should be established by one (or more) of the following types of evidence in the following order of preference:

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(2) Official report from a public agency as to a marriage which occurred while the officer was employed with such agency;

(3) The affidavit of the clergyman or magistrate who officiated;

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;

(5) The affidavits or sworn statements of two or more eyewitnesses to the ceremony;

(6) In jurisdictions where "common law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived; or

(7) Any other evidence which would reasonably support a belief by the Bureau that a valid marriage actually existed.

(b) BJA will not recognize a claimant as a "common law" spouse under § 32.12(a)(6) unless the State of domicile recognizes him or her as the spouse of the officer.

(c) If applicable, certified copies of divorce decrees of previous marriages or death certificates of the former spouses of either party must be submitted.

§ 32.13 Determination of relationship of child.

(a) *In general.* A claimant is the child of a public safety officer if the individual's birth certificate shows the officer as the individual's parent.

(b) *Alternative.* If the birth certificate does not show the public safety officer as the claimant's parent, the sufficiency of the evidence will be determined in accordance with the facts of a particular case. Proof of the relationship may consist of—

(1) An acknowledgement in writing signed by the public safety officer; or

(2) Evidence that the officer has been identified as the child's parent by a judicial decree ordering the officer to contribute to the child's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the officer was the informant and was named as the parent of the child; or

(ii) Affidavits or sworn statements of persons who know that the officer accepted the child as his or her own; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the officer was named as the parent of the child.

(c) *Adopted child.* Except as may be provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) *Stepchild.* The relationship of a stepchild to the deceased officer shall be demonstrated by—

(1) Evidence of birth to the spouse of the officer as required by paragraphs (a) and (b) of this section; or

(2) If adopted by the spouse, evidence of adoption as required by paragraph (c) of this section; or

(3) Other evidence, such as that specified in § 32.13(b), which reasonably supports the existence of a parent-child relationship between the child and the spouse;

(4) Evidence that the stepchild was either—

(i) Living with; or

(ii) Dependent for support, as set forth in § 32.15; or

(iii) In a parent-child relationship, as set forth in § 32.13(b), with the officer at the time of the officer's death, and

(5) Evidence of the marriage of the officer and the spouse, as required by § 32.12.

§ 32.14 Determination of relationship of parent.

(a) *In general.* A claimant is the parent of a public safety officer if the officer's birth certificate shows the claimant as the officer's parent.

(b) *Alternative.* If the birth certificate does not show the claimant as the officer's parent, proof of the relationship may be shown by—

(1) An acknowledgement in writing signed by the claimant before the officer's death; or

(2) Evidence that the claimant has been identified as the officer's parent by judicial decree ordering the claimant to contribute to the officer's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as:

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the officer; or

(ii) Affidavits or sworn statements of persons who know the claimant had accepted the officer as the claimant's child; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the claimant had been named as the parent of the child.

(c) *Adoptive parent.* Except as provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the claimant as the officer's parent will suffice.

(d) *Step-parent.* The relationship of a step-parent to the deceased officer shall be demonstrated by—

(1)(i) Evidence of the officer's birth to the spouse of the step-parent as required by § 32.13 (a) and (b); or

(ii) If adopted by the spouse or the step-parent, proof of adoption as required by § 32.13(c); or

(iii) Other evidence, such as that specified in paragraph (b) of this section, which reasonably supports a parent-child relationship between the spouse and the officer; and

(2) Evidence of the marriage of the spouse and the step-parent, as required by § 32.12.

§ 32.15 Determination of dependency.

(a) To be eligible for a death benefit under the Act, a stepchild not living with the deceased officer at the time of the officer's death shall demonstrate that he or she was substantially reliant for support upon the income of the officer.

(b) The claimant stepchild shall demonstrate that he or she was dependent upon the decedent at either the time of the officer's death or of the personal injury that was the substantial factor in the officer's death.

(c) The claimant stepchild shall demonstrate dependency by submitting a signed statement of dependency within a year of the officer's death. This statement shall include the following information—

(1) A list of all sources of income or support for the twelve months preceding the officer's injury or death;

(2) The amount of income or value of support derived from each source listed; and

(3) The nature of support provided by each source.

(d) Generally, the Bureau will consider a stepchild "dependent" if he or she was reliant on the income of the deceased officer for over one-third of his or her support.

Subpart D—Interim and Reduced Death Payments

§ 32.16 Interim payment in general.

(a) Whenever the Bureau determines upon a showing of need and prior to final action that the death of a public safety officer is one with respect to which a benefit will probably be paid, the Bureau may make an interim benefit payment not exceeding $3,000 to the individual entitled to receive a benefit under Subpart C of this part.

(b) The amount of an interim payment under this Subpart shall be deducted from the amount of any final benefit paid to such individual.

§ 32.17 Repayment and waiver of repayment.

Where there is no final benefit paid, the recipient of any interim benefit paid under § 32.16 shall be liable for repayment of such amount. The Bureau may waive all or part of such repayment considering for this purpose the hardship which would result from such repayment.

§ 32.18 Reduction of payment.

(a) The benefit payable under this part shall be in addition to any other benefit that may be due from any other source, except—

(1) Payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, sec. 4–622);

(2) Benefits authorized by section 8191 of title 5, United States Code, providing compensation for law enforcement officers not employed by the United States killed in connection with the commission of a crime against the United States. Such beneficiaries shall only receive benefits under such section 8191 that are in excess of the benefits received under this part; and

(3) The amount of the interim benefit payment made to the claimant pursuant to § 32.16.

(b) No benefit paid under this part shall be subject to execution or attachment.

(c) No benefit is payable under this part:

(1) With respect to the death of a public safety officer if a benefit is paid under this part with respect to the disability of such public safety officer; or

(2) With respect to the disability of a public safety officer if a benefit is payable under this part with respect to the death of such public safety officer.

Subpart E—Filing and Processing of Claims

§ 32.19 Persons executing claims.

(a) The Bureau shall determine who is the proper party to execute a claim in accordance with the following rules—

(1) The claim shall be executed by the claimant or the claimant's legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(2) If the claimant is mentally incompetent or physically unable to execute the claim; and

(i) Has a leg ally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative, or

(ii) Is in the care of an institution, the claim may be executed by the manager or principal officer of such institution.

(3) For good cause shown, such as the age or prolonged absence of the claimant, the Bureau may accept a claim executed by a person other than one desired in paragraphs (a)(1) and (a)(2) of this section.

(b) Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of such person's authority to execute the claim on behalf of such claimant in accordance with the following rules—

(1) If the person executing the claim is the legally—appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(2) If the person executing the claim is not such a legally-designated representative, the evidence shall be a statement describing such person's relationship to the claimant or the extent to which such person has the care of such claimant or such person's position as an officer of the institution of which the claimant is an inmate or patient. The Bureau may, at any time, require additional evidence to establish the authority of any such person to file or withdraw a claim.

§ 32.20 Claims.

(a) Claimants are encouraged to submit their claims on OJP Form 3650/5 for death benefits, or the disability benefits claim form, which can be obtained from: Public Safety Officers' Benefits Program, Bureau of Justice Assistance, Washington, DC 20531.

(b) Where an individual files OJP Form 3650/5 for death benefits, or the disability benefits claim form, or other written statement with the Bureau which indicates an intention to claim benefits, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(c) A claim by a permanently and totally disabled public safety officer or on behalf of a survivor of a deceased public safety officer shall be filed within 1 year after the date of death or prerequisite disability certification unless the time for filing is extended by the Director for good cause shown.

(d) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim under § 32.19.

§ 32.21 Evidence.

(a) A claimant for any benefit or fee under the Act and the regulations shall submit such evidence of eligibility or other material facts as is specified by these regulations. The Bureau may require at any time additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and the regulations has submitted no evidence or insufficient evidence of any material issue or fact, the Bureau shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request the claimant to submit such evidence within a reasonably specified time. The claimant's failure to submit evidence on a material issue or fact as requested by the Bureau shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

§ 32.22 Representation.

(a) A claimant may be represented in any proceeding before the Bureau by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this subsection is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Bureau must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee the petitioner may charge or receive, if any, shall be determined by the Bureau of the basis of the factors described in paragraphs (e) and (g) of this section.

(d) Written notice of a fee determination made under this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact that the Bureau assumes no responsibility for payment.

(e) To obtain approval of a fee for services performed before the Bureau, a representative, upon completion of the proceedings in which the representative rendered services, must file with the Bureau a written petition containing the following information—

(1) The dates the representative's services began and ended;

(2) An itemization of services rendered with the amount of time spent in hours, or parts thereof;

(3) The amount of the fee the representative desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered on behalf of the claimant in connection with other claims or causes of action arising from the officer's death or permanent and total disability before any State or Federal court or agency;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled the representative to render valuable servics to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the claimant

and that the claimant was advised of the claimant's opportunity to submit his or her comments on the petition to BJA within 20 days.

(f) No fee determination will be made by the Bureau until 20 days after the date the petition was sent to the claimant. The Bureau encourages the claimant to submit comments on the petition to the Bureau during the 20-day period.

(g) In evaluating a request for approval of a fee, the purpose of the public safety officers' benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors—

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required to render the services;

(4) The amount of time spent on the case;

(5) The results achieved;

(6) The level of administrative review to which the claim was carried within the Bureau and the level of such review at which the representative entered the proceedings;

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested;

(8) The customary fee for this kind of service; and

(9) Other awards in similar cases.

(h) In determining the fee, the Bureau shall consider and add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which had previously been obtained by the Bureau, and no reimbursement shall be allowed for expenses incurred in establishing or pursuing the representative's application for approval of the fee.

Subpart F—Determination, Hearing, and Review

§ 32.23 Finding of eligibility or ineligibility.

Upon making a finding of eligibility, the Bureau shall notify each claimant of its disposition of his or her claim. In those cases where the Bureau has found the claimant to be ineligible for a benefit, the Bureau shall specify the reasons for the finding. The finding shall set forth the findings of fact and conclusions of law supporting the decision. A copy of the decision, together with information as to the right to a hearing and review shall be mailed to the claimant at his or her last known address.

§ 32.24 Request for a hearing.

(a) A claimant may, within thirty (30) days after notification of ineligibility by the Bureau, request the Bureau to reconsider its finding of ineligibility. The Bureau shall provide the claimant the opportunity for an oral hearing which shall be held within 60 days after the request for reconsideration. The claimant may waive the oral hearing and present written evidence to the Bureau within 60 days after the request. The request for hearing shall be made to the Director, Public Safety Officers' Benefits Program, BJA, Washington, DC 20531.

(b) If requested, the oral hearing shall be conducted before a hearing officer authorized by the Bureau to conduct the hearing in any location agreeable to the claimant and the hearing officer.

(c) In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by Chapter 5 of the Administrative Procedures Act, but must conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

(d) Pursuant to sections 805, 806 and 1205(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the hearing officer may, whenever necessary:

(1) Issue subpoenas;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Receive evidence at any place in the United States.

(e) If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may adjourn the hearing and, at any time prior to mailing the decision, reopen the hearing for the receipt of such evidence.

(f) A claimant may withdraw his or her request for a hearing at any time prior to the mailing of the decision by written notice to the hearing officer so stating, or by orally so stating at the hearing. A claimant shall be deemed to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing, and does not, within 10 days after the time set for the hearing, show good cause for such failure to appear.

(g) The hearing officer shall, within 10 days after receipt of the last piece of evidence relevant to the proceeding, make a determination of eligibility. The determination shall set forth the findings of fact and conclusions of law supporting the determination. The hearing officer's determination shall be the final agency decision, except when it is reviewed by the Director under paragraph (h) or (i).

(h) The Director may, on his or her own motion, review a determination made by a hearing officer. If the BJA Director decides to review the determination, he or she shall:

(1) Inform the claimant of the hearing officer's determination and the BJA Director's decision to review that determination; and

(2) Give the claimant 30 days to comment on the record and offer new evidence or argument on the issues in controversy.

The BJA Director, in accordance with the facts found on review, may affirm or reverse the hearing officer's determination. The BJA Director's determination shall set forth the findings of fact and conclusions of law supporting the determination. The BJA Director's determination shall be the final agency decision.

(i) A claimant determined ineligible by a hearing officer under paragraph (g) may, within 30 days after notification of the hearing officer's determination:

(1) Request the BJA Director to review the record and the hearing officer's determination and

(2) Comment on the record and offer new evidence or argument on the issues in controversy.

The BJA Director shall make the final agency determination of eligibility within 30 days after expiration of the comment period. The notice of final determination shall set forth the findings of fact and conclusions of law supporting the determination. The BJA Director's determination shall be the final agency decision.

(j) No payment of any portion of a death or permanent and total disability benefit, except interim death benefits payable under § 32.16, shall be made until all hearings and reviews which may affect that payment have been completed.

Subpart G—National Programs for Families of Public Safety Officers Who Have Died in the Line of Duty

§ 32.25 National Programs.

The Director is authorized and directed to use up to $150,000 of the funds appropriated for this part to establish national programs to assist the families of public safety officers who have died in the line of duty.

Appendix to Part 32—PSOB Hearing and Appeal Procedures

a. Notification to Claimant of Denial

These appeal procedures apply to a claimant's [1] request for reconsideration of a denial made by the Public Safety Officers' Benefits (PSOB) Office. The denial letter will advise the claimant of the findings of fact and conclusions of law supporting the PSOB Office's determination, and of the appeal procedures available under § 32.24 of the PSOB regulations. A copy of every document in the case file that (1) contributed to the determination, and (2) was not provided by the claimant shall also be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The attached material might typically include medical opinions offered by the Armed Forces Institute of Pathology or other medical experts, legal memoranda from the Office of General Counsel of the Office of Justice Programs, or memoranda to the file prepared by PSOB Office staff. A copy of the PSOB regulations shall also be enclosed.

b. Receipt of Appeal

1. When an appeal has been received, the PSOB Office will assign the case and will transmit the complete case file to a hearing officer. Assignments will be made in turn, from a standing roster, except in those cases where a case is particularly suitable to a specific hearing officer's experience.

2. The PSOB Office will inform the claimant of the name of the hearing officer, request submission of all evidence to the hearing officer, and send a copy of this appeals procedure. If an oral hearing is requested, the PSOB Office will be responsible for scheduling the hearing and making the required travel arrangements.

3. The PSOB Office will be responsible for providing all administrative support to the hearing officer. An attorney from the Office of General Counsel (OGC) who has not participated in the consideration of the claim will provide legal advice to the hearing officer. The hearing officer is encouraged to solicit the advice of the assigned OGC attorney on all questions of law.

4. Prior to the hearing, the hearing officer shall request the claimant to provide a list of expected witnesses and a brief summary of their anticipated testimony.

c. Designation of Hearing Officers

A. In an internal instruction the BJA Director designated a roster of hearing officers to hear PSOB appeals.

1. The hearing officers are specifically delegated the Director's authority to:

(i) Issue subpoenas;

(ii) Administer oaths;

(iii) Examine witnesses; and

(iv) Receive evidence at any place in the United States the officer may designate.

d. Conduct of the Oral Hearing

A. If requested, an oral hearing shall be conducted before the hearing officer in any location agreeable to the officer and the claimant.

1. The hearing officer shall call the hearing to order and advise the claimant of (1) the findings of fact and conclusions of law supporting the initial determination; (2) the nature of the hearing officer's authority; and (3) the manner in which the hearing will be conducted and a determination reached.

2. In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules or procedures, or by chapter 5 of the Administrative Procedure Act, but must conduct the hearing in such a manner as to best ascertain the rights of the claimant.

3. The hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim.

4. Evidence may be presented orally or in the form of written statements and exhibits. All witnesses shall be sworn by oath or affirmation.

5. If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing may be adjourned and, at any time prior to the mailing of notice of the decision, reopened for the receipt of such evidence. The officer should, in any event, seek to conclude the hearing within 30 days from the first day of the hearing.

6. All hearings shall be attended by the claimant, his or her representative, and such other persons as the hearing officer deems necessary and proper. The wishes of the claimant should always be solicited before any other persons are admitted to the hearing.

7. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

8. The hearing will be deemed closed on the day the hearing officer receives the last piece of evidence relevant to the proceeding.

9. If the claimant waives the oral hearing, the hearing officer shall receive all relevant written evidence the claimant wishes to submit. The hearing officer may ask the claimant to clarify or explain the evidence submitted, when appropriate. The hearing officer should seek to close the record no later than 60 days after the claimant's request for reconsideration.

e. Determination

1. A copy of the transcript shall be provided to the hearing officer, to the claimant, to the PSOB Office, and to the OGC after the conclusion of the hearing.

2. The hearing officer shall make his, or her, determination no later than the 30th day after the last piece of evidence has been received. Copies of the determination shall be made available to the PSOB Office and the OGC for their review.

3. If either the PSOB Office or the OGC disagrees with the hearing officer's final determination, that office may request the BJA Director to review the record. If the BJA Director agrees to review the record, he or she will send the hearing officer's determination, all comments received from the PSOB Office, the OGC, or other sources (except where disclosure of the material would result in an unwarranted invasion of privacy), and notice of his or her intent to review the record to the claimant. The BJA Director will also advise the claimant of his or her opportunity to offer comments, new evidence, and argument within 30 days after the receipt of notification. The BJA Director shall seek to advise all parties of the final agency decision within 30 days after the expiration of the comment period.

4. If the PSOB Office and the OGC agree with the hearing officer's determination or the BJA Director declines to review the record, the hearing officer's determination will be the final agency decision and will be

[1] As used in this procedure, the word, *claimant* means a claimant for benefits or, where appropriate, the claimant's designated representative.

sent to the claimant by the PSOB Office immediately.

5. If the hearing officer's determination is a denial, all material that (1) contributed to the determination and (2) was not provided by the claimant shall be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The claimant will be given an opportunity to request the BJA Director to review the record and the hearing officer's decision, and to offer comments, new evidence, or argument within 30 days. The BJA Director shall advise all parties of the final agency decision within 30 days after the expiration of the comment period.

6. The PSOB Office will provide administrative support to the hearing officer and the BJA Director throughout the appeal process.

Gerald (Jerry) P. Regier,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 91–23529 Filed 10–2–91; 8:45 am]

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federal register

Thursday
October 3, 1991

Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans: Revision of the Visibility FIP for Arizona; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-4018-5]

Approval and Promulgation of Implementation Plans: Revision of the Visibility FIP for Arizona

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice revises the Federal implementation plan (FIP) for the State of Arizona to include a sulfur dioxide (SO_2) emission limit of 42 nanograms per Joule (ng/J) [0.10 pound per million British thermal units (lb/MMBtu)], heat input for the Navajo Generating Station (NGS) to remedy visibility impairment in the Grand Canyon National Park (GCNP). Compliance with this emission limit will be phased-in by unit in 1997, 1998, and 1999 and determined on a plant-wide annual rolling average basis. In addition, NGS will be required to reschedule its maintenance such that 6 unit-weeks of maintenance will be performed during the winter months.

This action is taken pursuant to sections 169A and 110(c) of the Clean Air Act (Act), 42 U.S.C. sections 7491 and 7410(c), which require EPA, upon default by a State, to take appropriate measures to remedy certain certified visibility impairments in mandatory Class I areas. The timing of today's action is in accordance with the revised settlement agreement between EPA and Environmental Defense Fund (EDF) in *EDF* v. *Reilly*, No. C82-6850 RPA (N.D. Cal.).

EFFECTIVE DATE: This action will be effective on November 4, 1991.

ADDRESSES: *Docket:* Pursuant to section 307(d)(1)(B) of the Act, 42 U.S.C. 7607(d)(1)(B), this action is subject to the procedural requirements of section 307(d). Therefore, EPA established Docket A-89-02A for this action. Materials related to the development of this notice have been placed in this docket. Materials related to EPA's preliminary attribution determination (54 FR 36948 (September 5, 1989)) have been placed in Docket A-89-02. For background information, materials related to the development of the visibility protection program (40 CFR 51.300 *et seq.*) are available in Docket A-79-40. Also, materials related to the development of the visibility new source review (NSR) and visibility monitoring strategies are available in Docket A-84-32. Materials related to the visibility long-term strategy, implementation of control strategy, and integral vista program are available in Docket A-85-26. All dockets are available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 p.m. to 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, Office of the General Counsel, room 1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Stonefield, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711, (919) 541-5350 or FTS 629-5350.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory Requirements

Section 169A of the Act, 42 U.S.C. 7491, sets as a national goal "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." Mandatory Class I Federal areas are certain national parks, wildernesses, and international parks as described in section 162(a) of the Act, 42 U.S.C. 7472(a). Section 169A requires that EPA promulgate regulations to assure reasonable progress toward meeting the national goal for mandatory Class I Federal areas where EPA has determined that visibility is an important value. On November 30, 1979, EPA identified 156 such areas, including the GCNP in Arizona, where visibility is an important air quality-related value (44 FR 69122). Section 169A specifically requires EPA to promulgate regulations requiring States to amend their State implementation plans (SIP's) to provide reasonable progress toward meeting the national goal for the 156 areas. On December 2, 1980, EPA promulgated the required visibility regulations (45 FR 80084, codified at 40 CFR 51.300 *et seq.*). The visibility regulations require the 36 States listed in section 51.300(b), including Arizona, to:

1. Coordinate SIP development with the appropriate Federal land managers (FLM's).

2. Develop programs to assess and remedy Phase I visibility impairment from existing sources and to prevent visibility impairment from new sources.

3. Develop a long-term (10 to 15 years) strategy to address, among other things, Phase I visibility impairment to assure reasonable progress toward the national goal.

4. Develop a visibility monitoring strategy to collect information on visibility conditions.

5. Consider in all aspects of visibility protection any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area) identified by the FLM's as critical to the visitors' enjoyment of the Class I areas. The affected States were required to submit revised SIP's satisfying these provisions by September 2, 1981 (see 45 FR 80091, codified at 40 CFR 51.302(a)(1)).[1]

The second and third requirements listed above are of particular relevance to today's action. Pursuant to 40 CFR 51.302(c)(2), each affected State is required to include in its SIP such emission limitations, schedules of compliance, and other measures as may be necessary to make reasonable progress toward the national visibility goal. Under 40 CFR 51.302(c)(1), an FLM may certify to a State that there exists impairment of visibility in any mandatory Class I Federal area. Such impairment must be addressed in accordance with 40 CFR 51.302(c) which sets forth measures for achieving reasonable progress, including best available retrofit technology (BART) and a long-term strategy (see 40 CFR 51.302(c) (1) and (2), section 169A(b)(2) (A) and (B)). Pursuant to 40 CFR 51.302(c)(4)(i), where impairment is certified at least 6 months prior to plan submission, an affected State must identify each existing stationary facility which may "reasonably be anticipated to cause or contribute" to any such impairment which is "reasonably attributable to that existing stationary facility," and analyze for BART any facility so identified. "Reasonably attributable" impairment is impairment "attributable by visual observation or any other technique the State deems appropriate" (40 CFR 51.301(s)). Where a

[1] The EPA's 1980 regulations implementing the statutory requirements of section 169A address visibility impairment that is reasonably attributable to a single source or small group of sources ("Phase I" impairment) (see generally 45 FR 80084 (December 2, 1980)). Recognizing certain scientific and technical limitations, EPA, in promulgating the 1980 regulations, deferred regulatory action on more "complex problems such as regional haze and urban plumes." *Id.* at 80086. Today, in accordance with the 1980 regulations, EPA is taking regulatory action to remedy visibility impairment that is caused by NGS. The EPA is in the process of establishing the Grand Canyon Visibility Transport Commission as required by section 169B of the Act. The duties of that commission include making recommendations on "promulgation of regulations under section 169A to address long-range strategies for addressing regional haze which impairs visibility in * * * the GCNP" (section 169B(d)(2)(C)).

State defaults on its obligations under the visibility regulations, EPA may act in place of the State pursuant to a FIP under section 110(c) of the Act, 42 U.S.C. 7410(c),[2] and promulgate such limitation and measures as are required to achieve reasonable progress. In such cases, all of the rights and duties that would otherwise fall to the State accrue instead to EPA.

The visibility regulations promulgated at 40 CFR 51.302(c)(4)(i) require that once a Phase I impairment has been certified, a State (or EPA if the State's visibility protection program addressing BART has not been approved, and EPA is acting in its place) must analyze for BART any specific existing stationary facility it identifies as a "reasonably attributable" source of the impairment. Pursuant to section 169A(b) of the Act (42 U.S.C. 7491(b)) and 40 CFR 51.302(c)(4)(iii), the emission limitation representing BART for fossil fuel-fired power plants with a generating capacity in excess of 750 megawatts (MW) must be determined pursuant to guidelines promulgated by the Administrator. This statutorily-required procedure for conducting a BART analysis is found in "Guidelines for Determining Best Available Retrofit Technology Analysis for Coal-Fired Power Plants and Other Stationary Facilities" (EPA–450/3–80–009b BART Guidelines). A copy of this document may be found in Docket A–89–02A.

In December 1982, environmental groups, including EDF, filed a citizens, suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act, 42 U.S.C. 7410(c), to promulgate visibility FIP's for the 35 States [3] that, at that time, had failed to submit SIP's to EPA as called for by the 1980 visibility regulations, *EDF* v. *Reilly*, No. C82–6850 RPA (N.D. Cal.). The State of Arizona was one of the 35 States that failed to submit a revised SIP to EPA.

The EPA and the plaintiffs negotiated a settlement agreement for the remaining States which the court approved by order on April 20, 1984. For more information on details of the provisions of the original settlement, including a schedule of actions by EPA, see EPA's announcement of the agreement at 49 FR 20647 (May 16, 1984).

B. Settlement Agreement

To remedy the States' failure to submit the necessary SIP revisions during the time specified by the regulations, the settlement agreement replaced the original regulatory deadlines for visibility SIP provisions with a rulemaking schedule agreed to by the parties and approved by the court. This schedule required EPA to review the existing SIP's to determine any deficiencies, allow the States to cure those deficiencies, and to promulgate FIP's on a specified schedule for those States that still did not submit visibility SIP revisions to EPA. Specifically, the first part of the agreement required EPA to promulgate FIP's which cover the monitoring and NSR provisions of 40 CFR 51.305 and 51.307. The EPA promulgated its monitoring strategy for 23 States and its NSR provisions for 21 States, including Arizona, at 50 FR 28544 (July 12, 1985), 51 FR 5504 (February 1, 1986), and 51 FR 22937 (June 24, 1986). In separate notices, EPA approved the SIP's of the other States with respect to monitoring and NSR.

The second part of the settlement agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations and gave the States until December 1988 to submit additional measures that would avoid the need for a FIP. These provisions are the general plan provisions for achieving reasonable progress toward the national visibility goal including BART and other implementation control strategies (§ 51.302), integral vista protection (§ 51.302–307), and long-term strategies (§ 51.306). The settlement agreement required EPA to promulgate FIP's to remedy any deficiencies on a specified schedule.

Pursuant to 40 CFR 51.302(c)(1), on November 14, 1985, the Department of the Interior (DOI) certified the existence of visibility impairment in all Class I areas within its jurisdiction in the lower 48 States.

On January 23, 1986, EPA determined that the SIP's of 32 States (including Arizona) were deficient with respect to the remaining visibility provisions (51 FR 3046) and offered the States an opportunity to submit corrective SIP revisions. Thereafter, EPA and the plaintiffs negotiated revisions to the settlement agreement which extended the deadlines for State action or, if the States failed to respond, Federal action proposing FIP's to remedy these deficiencies. The court approved these revisions by its order of September 9, 1986.[4]

On March 24, 1986, the DOI sent a letter to EPA which supplemented its earlier certification of visibility impairment. The letter addressed the GCNP and identified the NGS, a coal-fired power plant located near Page, Arizona, as a probable source of impairment in this Class I area. A copy of this letter may be found in Docket A–89–02.

Thirty-two affected States failed to submit visibility SIP revisions in response to the notice of deficiency. Consequently, in accordance with the revised settlement agreement, on March 12, 1987 (52 FR 7802), EPA proposed to disapprove the SIP's of 32 States, including Arizona, for failing to meet the remaining provisions of the visibility regulations, including general plan requirements to achieve reasonable progress toward the national visibility goal (which in turn includes BART, long-term strategies, and other control strategies). Also in accordance with the agreement, on November 24, 1987 (52 FR 45132), EPA took final action disapproving the affected SIP's, again including Arizona. In that action, EPA also promulgated, as FIP measures under section 110(c), general plan requirements for these States. The EPA also determined that BART was unnecessary in 28 States because it could not reasonably attribute the visibility impairment of mandatory Class I Federal areas in these States to specific sources or small groups of sources. In addition, under the revised agreement, EPA deferred until August 31, 1988 a decision regarding the need

[2] Section 110(c) requires EPA to promulgate FIP's whenever a State fails to submit an implementation plan (or portion thereof) which meets the requirements of section 110, whenever the Administrator determines that a plan (or portion) is not in accordance with the requirements of section 110, or whenever the State fails to revise its plan within 60 days after notification by the Administrator in accordance with section 110(a)(2)(H).

During the House of Representatives' consideration of the Conference Report on the 1977 Amendments to the Clean Air Act, Congressman Rogers reiterated that the conferees had agreed that EPA was to act where States failed to carry out their duties in implementing the requirements of section 169A. The pertinent part of Congressman Rogers' statement is as follows:

"The conferees * * * rejected a motion to delete EPA's supervisory role under section 110 to assure that the required progress towards that goal (the national visibility goal) will be achieved by the revised State plan. If a State visibility protection plan is not adequate to assure such progress, the Administrator must disapprove that portion of the SIP and promulgate a visibility protection plan under section 110(c). Thus, visibility protection in mandatory federal class I areas remains a national commitment, which is nationally enforceable."

See Senate Comm. on Environment and Public Works, 95th Cong. 2d. Sess. "A Legislative History of the Clean Air Act Amendment of 1977" No. 16, vol. 3 at 311, 320–21 (Comm. Print 1978).

[3] The State of Alaska had submitted a SIP which was approved on July 5, 1983 at 48 FR 30623.

[4] A copy of the settlement agreement and revisions is available in Docket A–85–26 at the address given at the beginning of this notice.

for BART or other control measures in the FIP's for the States of Arizona, Maine, Minnesota, and Utah to address certified visibility impairments in seven Class I areas in these States which potentially could be reasonably attributed to a specific source pending acquisition and evaluation of additional technical information regarding the potential sources of impairment.

Because all of the additional information needed by EPA was forthcoming but still not available by August 1988, the Agency sought and received a second extension, until August 31, 1989, of the deadline for issuing a rulemaking proposal regarding the need for BART or other control measures to remedy visibility impairments in three of the remaining Class I areas (Moosehorn Wilderness, GCNP, and Canyonlands National Park). With regard to the impairment in the GCNP, EPA delayed action in order to allow the National Park Service (NPS) time to analyze the data from a 1987 winter visibility attribution study, termed the Winter Haze Intensive Tracer Experiment (WHITEX), conducted in the Colorado Plateau where the GCNP is located. In the meantime, on May 19, 1989 (54 FR 21904), in accordance with the second revision to the settlement agreement, EPA promulgated final decisions concerning certified visibility impairments in four of the seven Class I areas. Based on monitoring conducted in these areas, EPA found that the visibility impairments were not reasonably attributable to any specific source. Therefore, EPA determined that it was not necessary to revise the FIP's for the States of Maine, Minnesota, and Arizona to include BART or other control strategies to remedy impairments in Roosevelt Campobello International Park (Canada), Voyageurs National Park (Minnesota), Saguaro Wilderness (Arizona), and Petrified Forest National Park (Arizona).

In April 1989, EPA received a draft report on WHITEX from the NPS.[5] Because of the delay in receiving this report, EPA believed that it lacked sufficient time to complete its analyses and issue a proposed rule by the August 31, 1989 deadline. Accordingly, EPA and EDF filed a joint motion to revise the settlement agreement for a third time, which was approved by order of the court dated July 6, 1989. Under this revision, there was no change in the deadlines for proposed action regarding Canyonlands National Park or Moosehorn Wilderness. As to GCNP, the third revision to the settlement agreement divided EPA's duty into two parts. The EPA would proceed, on a preliminary basis, to issue a finding on reasonably attributable impairment by the August 31, 1989 deadline. However, if EPA did provisionally identify a specific source of impairment, it would solicit comments on that finding and would have additional time to conduct a BART analysis. The EPA was to issue a rulemaking proposal on the need for BART by February 1, 1990 unless, in response to comments, EPA rejected its proposed identification and instead determined that BART was unnecessary.

In accordance with the third revision to the settlement agreement, EPA published a notice of proposed rulemaking on September 5, 1989 (54 FR 36948). Regarding Moosehorn Wilderness, EPA identified a source of the certified impairment but proposed that BART was unnecessary because the impairment would be adequately remedied by the retirement of certain existing emission units and the addition of pollution controls on other units pursuant to a permit issued under the Act's prevention of significant deterioration provisions. As to Canyonlands National Park, EPA could not reasonably attribute the certified impairment to a specific source at that time and so proposed that BART was unnecessary. On June 13, 1990 (55 FR 24060), EPA issued final decisions that BART was not necessary to address impairment in either the Moosehorn Wilderness or the Canyonlands National Park.

Regarding the GCNP, in the September 5, 1989 notice, EPA preliminarily attributed several episodes of wintertime visibility impairment to emissions from the NGS. In that regard, EPA reviewed the draft NPS report on WHITEX and concurred with the findings of the NPS. The EPA solicited comments on the merits of its preliminary attribution finding.

On November 28, 1989, the Salt River Project Agricultural Improvement and Power District (SRP), et al., and Alabama Power Company, et al., intervenors in *EDF* v. *Reilly*, filed a motion requesting a 1-year delay in the rulemaking schedule so that, among other things, the intervenors could conduct their own studies of the visibility impairment in the GCNP. By order dated January 9, 1990, the court granted the intervenors' motion to extend the deadlines. This order set February 1, 1991, as the new deadline for EPA to propose whether or not to require BART emission limits for the NGS to remedy winter visibility impairment. The order also extended the deadline for final action on any proposal regarding BART until October 1991 (6 months after the close of the comment period).[6]

C. Navajo Generating Station

The NGS is a 2250 MW coal-fired power plant located near Page, Arizona, approximately 20 kilometers from the northern boundary of the GCNP. The NGS is a baseload generating station consisting of three 750 MW units which became operational between 1974 and 1976. The SRP is the operating agent for NGS which is jointly owned by the SRP,[7] the Los Angeles Department of Water and Power, the Arizona Public Service Company, the Nevada Power Company, and the Tucson Electric Power Company. Existing pollution control equipment at NGS includes electrostatic precipitators for particulate matter (PM) removal and specific burner design for nitrogen oxides (NO_x) control.

D. February 8, 1991 Proposal

On February 8, 1991, EPA proposed to revise the FIP for Arizona to include emission limits to address the visibility impairment observed in GCNP. The following is a summary of the main issues discussed in the proposal notice.

1. Emission Limitation

The EPA proposed to adopt a continuous SO_2 emission limitation of 0.30 lb/MMBtu. Compliance would be determined on a 30-day rolling average and would be phased in between 1995 and 1999. Because of the uncertainty in determining the improvement in visibility expected as a result of reducing emissions at the NGS, EPA solicited comments on three alternative control strategies for NGS:

a. A continuous SO_2 emission limitation of 0.50 lb/MMBtu. Compliance would be determined on a 30-day rolling

[5] Malm, et al., "The National Park Service Report on WHITEX Draft Final Report" (April 7, 1989).

[6] The EDF has appealed the extension of rulemaking deadlines in this case, *EDF* v. *Reilly*, No. 90–15264 (9th Cir.). That appeal is pending. In a Memorandum of Understanding (MOU) discussed below, parties to this litigation have agreed, in light of today's action, to petition (a) the Ninth Circuit to vacate the judgment below and remand the matter to the court below with instructions to dismiss and (b) the District Court for the Northern District of California to dismiss *EDF* v. *Reilly*, No. C82–6850.

[7] The SRP owns 21.7 percent of the NGS project for its own use and benefit, and 24.3 percent for the use and benefit of the United States in accordance with the NGS project agreements. The term "NGS participants" is used in this notice to refer to the parties which have rights and responsibilities associated with the operation of NGS and includes the owners, the operators, and the U.S. Bureau of Reclamation (for the United States).

average and would be phased in between 1995 and 1999.

b. A continuous SO_2 emission limitation of 0.10 lb/MMBtu. Compliance would be determined on a 30-day rolling average and would be phased in between 1995 and 1999.

c. A January 10, 1991 proposal submitted by SRP under which it would test alternative control technologies, and if one of the technologies met a minimum removal efficiency at a set cost, the NGS would install that technology and operate it in the wintertime. If none of the technologies met the test criteria, NGS would reduce its emissions by 70 percent (0.30 lb/MMBtu emission limit) measured on an annual basis by the year 2000.

In addition, EPA requested comment on whether another emission limitation or a different averaging period may be more appropriate.

2. Attribution

As part of the February 8, 1991 proposal, EPA reopened the comment period on its September 5, 1989 preliminary finding that several episodes of wintertime impairment in the GCNP was reasonably attributable to NGS. The EPA noted both in the September 1989 and the February 1991 notices that the finding was not based on any single analytical technique in the NPS report on WHITEX, but rather on the collection of techniques performed by the NPS using WHITEX and other data. In detail, EPA explained that all of the techniques used by the NPS support the conclusion that NGS is a source of visibility impairment in the Grand Canyon during certain wintertime episodes. Also, in some detail, EPA discussed the National Academy of Science's (NAS') review of the WHITEX study and discussed other visibility studies performed subsequent to WHITEX.

The National Research Council of the NAS reviewed and reported on the scientific methods used in the WHITEX report. The NAS report, entitled "Haze in the Grand Canyon: An Evaluation of the Winter Haze Intensive Tracer Experiment" (October 1990), contained a qualitative assessment of WHITEX which supported EPA's finding that, on some days, NGS is a source of visibility impairment in the GCNP.[8] Further, the NAS found that the "rate of SO_2 emissions from NGS is easily large enough to serve as the source of the sulfur measured in the GCNP."[9] However, the report also found that the data base and data analyses techniques in the WHITEX report were not, standing alone, sufficient to ascertain the quantitative NGS contribution to haze at any given time. The NAS report has been placed in the rulemaking docket.[10]

The SRP has conducted another study known as the Navajo Generating Station Visibility Study (NGSVS). That study attempted to measure the degree of contribution by the NGS to visibility impairment in the GCNP during the 1989–1990 winter season and to assess the level of improvement expected as a result of reducing the SO_2 emissions at NGS. The SRP submitted a draft report describing that study and its results[11] during the public comment period on EPA's February 8, 1991 proposal. The NGSVS concluded that NGS emissions were present at Hopi Point less frequently than during the WHITEX period. In addition, the NGSVS concluded that on days when NGS emissions were present, visibility impairment at Hopi Point associated with those emissions was substantially less than the amount calculated in the NPS report on WHITEX. However, results indicate that NGS was responsible for a significant quantity of sulfate and haze during specific visibility impairment episodes in GCNP.

3. BART Analysis

In light of its attribution finding, EPA conducted an analysis in accordance with the BART Guidelines (EPA–450/3–80–009b) and 40 CFR 51.301(c)(4)(iii).[12] That analysis included consideration of the following: the costs of compliance, the energy and non-air quality environmental impacts, any existing pollution control technology in use at the facility, the remaining useful life of the source, and the degree of improvement in visibility anticipated to result from application of controls.

Considering the requirements found in the BART Guidelines, EPA divided its analysis into two major parts. In the first part, EPA identified the SO_2 emission controls that are readily available to the source, the costs of such controls, and other impacts of installing and operating the controls. In the second part of the analysis, EPA attempted to define the source-impairment relationship which was then used to predict the improvements in visual air quality that can reasonably be expected to occur as a result of installing and operating the controls defined in the control technology analysis. Because EPA was faced with some uncertainties in each of the parts of the analysis, EPA bounded its results by giving low and high estimates. A detailed discussion of this analysis for NGS was provided in EPA's February 8, 1991 proposal.

To estimate the cost of controlling the SO_2 emissions at NGS, EPA used the Integrated Air Pollution Control System (IAPCS) cost model to predict the capital and operating cost estimates for 0.10, 0.30, and 0.50 lb/MMBtu control levels.[13] The results from the IAPCS indicated that wet flue gas desulfurization (FGD) achieving a 0.30 lb/MMBtu emission limit for all three units, the control level that was proposed by EPA, was estimated to have total capital cost requirements of between $245.9 million and $402 million with total levelized annual costs (including amortized capital, interest, operating, and maintenance costs) estimated to be between $91.9 million and $128.3 million.[14]

In its February 8, 1991 proposal, EPA also estimated the potential costs to residential electricity customers serviced by the NGS participants as well as the potential costs to Central Arizona Project (CAP) customers.

One of the more complicated tasks in the BART analysis was defining the relationship between the SO_2 emissions at NGS and the visibility impairing sulfate in the GCNP. This relationship had to be addressed in order to estimate the degree of improvement in visibility that could be anticipated to result from the use of the alternative SO_2 control systems. Because of the complex terrain in and around the GCNP, EPA defined the source/impairment relationship using the ratio of SO_2 emissions at NGS to sulfate in the GCNP attributable to NGS as found in the final WHITEX report. Using this ratio, EPA then applied a linear rollback model. However, in light of the uncertainties

[8] The report found, for example, that the detection at Hopi Point (GCNP) of the unique tracer released from NGS in the WHITEX study "is an unambiguous indicator that air parcels containing NGS emissions did impinge on the GCNP on several occasions." Executive Summary at p. 3.

[9] The NAS report at p. 33.

[10] Additional copies of this report are available from the National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20418.

[11] Sonoma Technology, Inc., "Navajo Generating Station Visibility Study," Draft Number 2, April 16, 1991.

[12] U.S. EPA, "Draft Report on Best Available Retrofit Technology (BART) Analysis for the Navajo Generating Station in Page, Arizona," January 1990. A copy of this document has been placed in Docket A–89–02A.

[13] Integrated Air Pollution Control System Costing Program, Version 3.0, copyright PEI and Associates, Inc., 1989.

[14] All dollar amounts were measured in 1988 dollars.

surrounding these analyses EPA considered a broad range of source-impairment relationships. In addition, EPA developed and applied a nonlinearity factor to the rollback model to estimate the improvements in visibility that would result from reductions in SO_2.

Because no single standard method exists for measuring improvements in visibility, the EPA employed two of the most widely used techniques to define the improvements in visibility expected to occur in the GCNP. One of the methods used to estimate the visibility improvements in the GCNP was analyzing the changes in contrast expected to occur as a result of reducing SO_2 emissions at NGS. The EPA stated in the proposal that this method is particularly relevant because human observers use contrast to make judgments of how atmospheric clarity changes with pollutant concentration. The contrast is defined as the percent difference between the brightness of a scenic element and its background. The second technique was to analyze the seasonal average visual range change (see 56 FR 5182 Table 1).

Although not specifically addressed in the BART analysis, the proposal noted that EPA suspected that NGS emissions may contribute to visibility impairment in the GCNP during other seasons of the year and in other Class I areas in the region. Thus, EPA sought comment on any other potential visibility impairments caused by NGS.

The EPA also noted in the proposal that it was not required as a part of its analysis to estimate monetary benefits associated with improving visibility in the GCNP. However, EPA evaluated the monetary benefits in developing a part of the preliminary Regulatory Impact Analysis (RIA) (as required by Executive Order 12291) for the proposed rule.

4. Control of Particulate Matter and Nitrogen Oxides

In the February 8, 1991 proposal, EPA noted that two other pollutants emitted by NGS, NO_x and PM, are known to contribute to visibility impairments in some circumstances.[15] The current emissions of NO_x and PM from NGS were not identified as significantly contributing to the visibility impairment in the Grand Canyon. However, EPA expressed concern based upon its technical judgment regarding the behavior of the pollutants as potential contributors to visibility impairment as a general matter, upon the amount of the pollutants emitted by NGS, upon the proximity of NGS to the GCNP, and upon the characteristics of the NGS plume, as shown by WHITEX and other studies, that increased emissions of these pollutants could result in impairment in the GCNP. The EPA noted that although the NGS is not subject to any NO_x emission limitations, SRP has stated that NGS currently emits NO_x at a rate of 0.4 to 0.5 lb/MMBtu. Therefore, EPA proposed an NO_x emission limit consistent with NGS' existing emission rate, as well as the rate at other similar plants, of 0.5 lb/MMBtu.

The EPA noted that PM emissions for the NGS are currently limited in two ways. The Arizona SIP has both an emission rate limitation of 0.06 lb/MMBtu and an opacity limit of 40 percent for NGS. The SRP has stated that NGS currently emits PM at a rate of 0.03 lb/MMBtu with an opacity of between 10 and 15 percent. Thus, the opacity limit of 40 percent is well above the NGS existing emissions. Therefore, EPA proposed a 20 percent opacity limitation consistent with current NGS emissions in order to preclude any visibility deterioration that would be caused by an increase in PM emissions.

The EPA requested comments on whether NO_x and PM emission limits would be appropriate for NGS.

5. Compliance Schedule

The EPA proposed to require that the emission limitation be achieved in three phases. Specifically, EPA proposed that the final emission limitation would need to be met on one unit by January 1, 1995; on two units by January 1, 1997; and on all three units by January 1, 1999. The EPA solicited comments on whether the phased-in compliance schedule proposed was appropriate as a matter of law or policy, and, as noted, requested comment on the January 1991 SRP proposal that a final emission limitation not become effective before January 1, 2000.

6. Use of Seasonal Controls

Part of the SRP proposal called for the use of seasonal controls. Therefore, EPA solicited comment on the use of seasonal controls. In the February 8, 1991 notice, EPA noted that such controls would have to be both technically and legally justified before they could be used.

7. Other Issues

In the February 8, 1991 proposal, EPA also specifically solicited comments on the following:

a. Use of continuous emission monitoring systems for compliance determinations.

b. Plant-wide averaging of the emission limitations.

c. Other available technologies which can reduce SO_2 emissions at NGS to achieve the proposed or alternative limits and which may require less capital investment and/or operating expenses than those technologies evaluated in the BART analysis.

In addition to soliciting written comments during the comment period, EPA held a public hearing on March 18 and 19, 1991 in Phoenix, Arizona. A copy of the transcript of the hearing is in Docket A–89–02A. As a result of the comment period and public hearing, EPA received over 400 comments on its proposal. All the comments have been placed in Docket A–89–02A.

Because of the differences in technical opinions expressed and data analyses submitted to EPA during the comment period, EPA sponsored a technical review meeting on April 25 and 26, 1991. The EPA invited the NGS participants and the environmental groups who submitted technical information to EPA to send technical representatives to the meeting to discuss the interpretation of the available data. The meeting was open to the public, and a summary of that meeting is included in Docket A–89–02A.

E. New Information After the Close of the Initial Comment Period

After the comment period closed on April 19, 1991, at the recommendation of EPA, representatives of SRP, Grand Canyon Trust (GCT), and EDF met to discuss alternative approaches to EPA's February 8, 1991 proposal. In August 1991, the outside parties reached agreement and together recommended that EPA adopt an alternative control for NGS consisting of a 0.10 lb/MMBtu SO_2 emission limitation (approximate to a 90 percent control level) based on a rolling annual average and phased in by unit in November 1997, November 1998, and August 1999. In addition, under the agreement, NGS would shift its maintenance schedule such that 6 unit-weeks of planned maintenance would occur between November 1 and March 15 each year. Under specific conditions, the Administrator of EPA may allow NGS to shift the maintenance schedule outside of that period or not to conduct scheduled maintenance in a given year.

Representatives of EPA participated in many of the meetings with the parties and provided technical assistance. Representatives of the State of Arizona also attended several of the meetings and provided additional technical support. New technical materials and cost information, including adjustments

[15] See, e.g., BART Guidelines at p. 12–13.

of the potential control costs, were exchanged between the parties and EPA. Summaries of the meetings and significant conversations in which EPA was involved and copies of the new material and information which were submitted to or developed by EPA have been included in Docket A–89–02A.

The outside parties memorialized their agreement in an MOU which they submitted to EPA along with recommended regulatory requirements for EPA's final rulemaking action. The SRP estimated (in 1992 dollars) a capital cost of $430 million and a total levelized annual cost of $89.6 million for the parties' recommended alternative. In comparison, SRP estimated a capital cost of $510 million and a total levelized annual cost of $106 million to meet the alternative EPA proposed in February 1991.

Noting that the alternative incorporated in the MOU would provide more visibility protection for the GCNP at a lower cost for NGS and its customers, EPA, on August 8, 1991, reopened the comment period on its February 8, 1991 proposed action (56 FR 38399, August 13, 1991). In the notice, EPA stated that it was giving serious consideration to the control option recommended by the outside parties and incorporated in an appendix to the notice a memorandum from EPA's Office of General Counsel concluding that the outside parties' legal rationale in support of their recommended control option was meritorious.

The EPA reopened the comment period until September 9, 1991. Where addresses were available, commenters on the February 8, 1991 proposal were notified by mail of the reopened comment period in order to facilitate their ability to comment.

The EPA received 21 comments during the supplemental comment period. Eighteen of the commenters supported the alternative incorporated in the MOU, and three opposed it. The SRP, GCT, EDF, the Wilderness Society, the National Wildlife Federation, and the Sierra Club conditionally withdrew their prior comments which were inconsistent with the MOU and associated documents.

II. Today's Action

In today's action EPA is promulgating its final determination on the attribution to NGS of certain visibility impairment episodes in GCNP and is promulgating Federal revisions to the visibility implementation plan for Arizona to address those impairment episodes. As discussed below, EPA has concluded that certain visibility impairment episodes in GCNP are traceable to NGS and that NGS is a dominant contributor to certain visibility impairment episodes. The EPA finds today that a 0.10 lb/MMBtu SO_2 emission limitation (approximately a 90 percent emission reduction) based on a rolling annual average and phased in by unit in November 1997, November 1998, and August 1999 in addition to scheduled winter maintenance at NGS affords greater visibility improvement than the alternative advanced in EPA's February 1991 proposal. In particular, it will reduce by two-thirds the amount of pollution allowed under the proposed rule. In addition, EPA finds that the final rule will be significantly less costly than the proposal. Consequently, EPA further concludes that today's final action will provide a greater degree of "reasonable progress" toward the national goal of remedying such impairment than would be provided by the February 1991 proposal (see section 169A(b)(2) of the Act, 42 U.S.C. 7491(b)(2)).

In EPA's August 1991 supplemental notice requesting comment on the rulemaking alternative largely adopted in final form today, the Agency noted that SRP, GCT, and EDF had recommended that the legal rationale in support of this alternative be the requirement in section 169A(b)(2) of the Act that implementation plan revisions addressing visibility impairment achieve "reasonable progress" toward the national visibility goal. The supplemental notice also indicated that EPA's Office of General Counsel had reviewed the matter and concluded, subject to any significant points that may be raised in the reopened comment period, that EPA could rely on the reasonable progress provisions as the basis for this alternative. No significant adverse comments addressing the legal basis were received. Accordingly, EPA is adopting this rationale as discussed in the supplemental notice.

Today's action is based upon the material in the docket including EPA's review and consideration of all comments received during the comment periods and at the public hearing. The agreement between GCT, EDF, and SRP and associated recommendations to EPA, largely adopted in final form today, also are in the docket. The EPA has responded to all of the significant comments received. Some responses are provided later in today's notice. Additionally, EPA has prepared a document accompanying today's action, "Response to Public Comments: Proposed Revisions to Arizona Visibility FIP for Navajo Generating Station," which responds to comments. This document has been placed in Docket A–89–02A.

A. Impairment Traceable to NGS

The EPA regulations promulgated on December 2, 1980 "[r]equire the control of impairment that can be traced to a single existing stationary facility or small group of existing stationary facilities * * *" (45 FR 80085). Accordingly, EPA's regulations currently cover existing sources where the impairment is traceable or "reasonably attributable" to that source by visual observation or other techniques deemed appropriate by the State (Phase I impairments). The EPA, acting for the State under section 110(c) of the Act, deems the techniques in the WHITEX report, the NGSVS report, and other data and analyses in the docket as appropriate techniques for determining reasonable attribution in this case for the following reasons.

1. The unique tracers, deuterated methane used in the WHITEX study and perfluorocarbons used in the NGSVS, injected into the emissions of NGS were observed in substantial quantities at Hopi Point during periods of episodic visibility impairment.

2. The NGS is the predominate source of SO_2 in the region.

3. SO_2 released by a power plant converts into sulfates through chemical transformation in the atmosphere.

4. Meteorological data show that the NGS plume easily can, and frequently does, travel to GCNP.

5. The data and analyses in the docket show that sulfates are the major contributor to visibility impairment in GCNP.

The EPA recognizes that NGS is not the only source of visibility impairment at GCNP. Under the applicable statutory provisions and regulations, however, this is not determinative [16] (see

[16] For example, under section 169A(b)(2) of the Act, EPA is authorized to require visibility implementation plans containing "emission limits, schedules of compliance and other measures" necessary to make reasonable progress toward meeting the national visibility goal (see also 40 CFR 51.302(c)). The national visibility goal, in turn, calls for the remedying of "any" manmade visibility impairment in Class I areas (see section 169A(a)(1) and 40 CFR 51.300(a)). As noted, EPA's regulations implementing section 169A address visibility impairment that is reasonably attributable to a single source or small group of sources and deferred action on complex problems such as regional haze (see generally, 45 FR 80084 (December 2, 1980)). Accordingly, as provided in the 1980 regulations, EPA may remedy through emission limits, schedules of compliance, or other measures "any" visibility impairment that is reasonably attributable to an existing stationary source or small group of sources (see also section 169A(c) of the Act and 50 CFR 51.303 (authorizing an exemption from control requirements only where a plant does not "by itself or in combination with other sources" emit pollution "which may reasonably be anticipated to cause or

Continued

generally section 169A of the Act and 40 CFR 51.300 307). Moreover, even though WHITEX and NGSVS contain some scientific uncertainty, they are technically adequate for the regulatory purposes at hand, as they both showed that episodes of visibility impairment in the GCNP can be reasonably attributed to NGS. Accordingly, EPA concludes today that certain visibility impairment episodes of the GCNP are traceable to NGS, and NGS is a dominant source of those impairments. Notwithstanding that other sources also may contribute to those impairment episodes at GCNP, EPA concludes that the addition of emissions controls at NGS alone will result in a significant improvement in visibility at GCNP and will make "reasonable progress" toward meeting the national visibility goal.

B. Control Technology

As part of the BART analysis [17] for the February 1991 proposal, EPA reviewed the available control technologies as well as the environmental impact of the use of such technologies and the estimated costs of installing and operating such equipment. In today's action, EPA is not requiring the use of any particular control technology. Rather, EPA is establishing an emission limitation and NGS has the discretion to select and install the type of control system which best meets its needs. The available information in the docket indicates that a wet FGD system will be the economically proven control technology for meeting the 0.10 lb/MMBtu emission limitation at NGS.

As a result of new information provided by SRP, EPA has revised and updated its cost estimates for the installation and operation of a wet FGD system. The revised estimated capital cost and total levelized annual cost to meet the emission limitation EPA proposed in February 1991, in 1992 dollars, are $510 million and $106 million, respectively. The estimated capital cost and the total levelized annual cost, in 1992 dollars, to meet the emission limitation promulgated today, are $430 million and $89.6 million, respectively. Although not considered in these cost estimates, EPA expects that NGS will be able to recoup a portion of the control costs by the sale of marketable allowances which it will receive as part of the allowance trading program that EPA is establishing under Title IV of the Act.

Based on the information submitted during the comment period by SRP and Nevada Power Company (NPC) and the above cost figures, EPA has estimated that the average SRP and NPC customers electric bills will increase approximately $1.72 and $1.57 per month, respectively. The customers of the other utilities will have smaller increases in their electric bills. Commenters representing CAP customers submitted information showing that water costs would increase between $4.10 and $4.50 per acre-foot based on EPA's February 1991 proposal. Since the cost figures for the final action are lower than figures used for these estimates, the increase in water costs for the CAP customers is expected to be less than $4.10 to $4.50 per acre-foot.

C. Control Strategy

The EPA has adopted the combination of a higher level of control; compliance phased in by unit in 1997, 1998, and 1999; an annual averaging period; and scheduled winter maintenance as a control strategy for NGS—the alternative recommended to the EPA by GCT, EDF, and SRP and identified in EPA's August 1991 supplemental notice—because it better addresses the visibility effects of concern at a lower cost than the proposal in EPA's February 1991 notice. As highlighted here and elsewhere, the control strategy for NGS must be viewed as a whole and not as severable parts. The EPA has carefully weighed the relevant statutory and regulatory considerations and concluded that, taken in its entirety, today's control strategy for NGS will provide a greater degree of reasonable progress toward the national goal at a lower cost than EPA's February proposal.

Essentially, the SO_2 emissions from NGS can contribute to two types of visibility impairment. The major impact of NGS is its dominant single source impact during certain episodic visibility impairment events, usually during the winter. This impact has been observed in winter studies (WHITEX and NGSVS) as well as intense aerosol monitoring within the canyon since 1988.[18] The other concern addressed by the control strategy in today's action is the less intense impairments which occur at the GCNP during seasons other than winter, and occur at other nearby mandatory Class I Federal areas.[19]

The lower level of NGS SO_2 emissions required by the 0.10 lb/MMBtu emission limitation adopted today will afford GCNP greater protection from episodic events than an emission limitation which allows significantly more SO_2 emissions but is averaged over a shorter period, such as the 0.30 lb/MMBtu emission limitation proposed by EPA in its February 1991 notice. The probability of high NGS contribution to severe episodic sulfate impairment events is limited by the known design reliability of current technologies which will achieve the required 0.10 lb/MMBtu emission limitation as well as the scheduled winter maintenance requirement. Thus, EPA believes that despite the use of an annual averaging time, the significant increase in control level, expected reliability of the control technology, and winter maintenance, taken together will, for the most part, prevent continuation of severe winter episodes caused by NGS. At the same time, the annual average lowers the costs of compliance.

With respect to long-term potential visibility impacts on the Golden Circle area (the other Class I areas in the Colorado Plateau), there is little doubt that the lower emission rate over a year's average will reduce NGS' contribution to sulfate formation and thus to sulfate-caused impairment more than the control level proposed by EPA in February 1991. Given NGS' central location in relation to many Class I areas, no matter what meteorological events occur over a multi-year period, it is likely that the sulfates originating from NGS and transported to surrounding Class I areas will be reduced in proportion to the difference in emission limitations, i.e., to one-third of the levels in the February 1991 proposal.

Further, during the comment period on the February 1991 proposal, EPA received technical information suggesting that NGS contributes to visibility impairment at GCNP in non-winter seasons.[20] For the reasons just discussed, the significantly lower emission rate required today will, over the long-term, curb NGS' contribution to any visibility impairment in the GCNP during seasons other than winter to a

contribute to significant impairment of visibility" in any Class I area and affirms, by negative inference, EPA's broad rulemaking authority)).

[17] U.S. EPA "Draft Report on Best Available Retrofit Technology (BART) Analysis for the Navajo Generating Station in Page, Arizona," January 1990.

[18] See Docket A–89–02A, specifically items IV–D–164 and IV–D–375.

[19] See, e.g., Latimer, Douglas, "Haze Impacts on the Golden Circle of National Parks of Sulfur Dioxide Emission from Navajo Generating Station: Haze Puff Model Calculations for 1986–90."

[20] See Docket A–89–02A, item IV–D–171, and seasonal control discussion below.

greater degree than EPA's proposed option.

Accordingly, the control scheme adopted today for NGS is appropriate for addressing the winter episodic visibility impairment observed at the GCNP and will also reduce any long-term, long-range impairment that NGS emissions may contribute to during other seasons at GCNP and at other nearby Class I areas.[21]

D. Emission Limitation

After reviewing the option recommended by SRP, EDF, and GCT in their MOU, EPA has determined that such a control strategy will provide a substantially greater degree of emissions reduction, and a correspondingly greater degree of visibility improvement at a substantially lower cost than the alternative proposed in February 1991.[22] For these reasons, EPA also concludes that this option will make additional reasonable progress towards attainment of the national visibility goal in comparison to the February 1991 proposal. Thus, in today's action EPA is promulgating an SO_2 emission limitation of 42 ng/J (0.10 lb/MMBtu) heat input to be phased in by unit in November 1997, November 1998, and August 1999, with compliance determined on a rolling annual average basis.

Under today's final action, compliance with the annual rolling average will be determined by computing a weighted plant-wide average of the SO_2 emission rate based on the daily SO_2 emission rate and the electric energy generated for the previous 365 "boiler operating days" for each unit.[23] The EPA was concerned that the plant-wide average reflects the actual release of emissions at the plant. Therefore, after discussion with representatives of SRP, GCT, and EDF, EPA settled on a methodology that appropriately weights the emissions from each unit before calculation of the plant-wide average. The EPA has used the daily electric energy generated as a weighting factor because that information is readily available for each unit and in this case is proportional to the heat input to the boilers. Specifically, compliance will be determined as follows:

1. For each unit that has accumulated at least 365 boiler operating days since the passage of the starting date applicable to it, the plant must measure and record the SO_2 emission rate and the electric energy generated on each boiler operating day. The SO_2 emission rate will be computed using the data from the required continuous emission monitoring system for the unit and using method 19, appendix A, 40 CFR part 60. The electric energy generated, in megawatt-hours, will be recorded from the megawatt-hour meter for the unit.
2. For each unit, the previous 365 boiler operating days will be identified.
3. For each such day, the product of the SO_2 emission rate and the electric energy generated will be computed.
4. The 365 products for each unit will be added.
5. The electric energy generated for the 365 boiler operating days for each unit will be added.
6. The sums of the product of the SO_2 emission rate and the electric energy generated will be divided by the sum of the electric energy generated to produce a plant-wide weighted annual average SO_2 emission rate for comparison with the emission limitation to determine compliance.

Recording and computation of the daily electric energy generated and SO_2 emission rates will commence on:

1. November 19, 1997 for the first unit.
2. November 19, 1998 for the second unit.
3. August 19, 1999 for the third unit.

The NGS has the discretion to determine which of its three units will be controlled first and second.

In the discussion below, EPA has recognized that certain difficulties encountered during the first year of operation of a control system or the catastrophic failure of a control system may, based on EPA's judgment, warrant a limited exclusion from compliance with the emission limitation. However, as discussion below indicates, the control system, as a general matter, must be optimally operated consistent with good engineering practices to keep emissions at, or below, the emission limitation.

For each unit, in determining compliance with the annual average emission limitation during the first year of operation of the control equipment installed to comply with this emission limitation, periods during which one of the following conditions are met will be excluded:

1. Equipment or systems do not meet designer's or manufacturer's performance expectations.
2. Field installation including engineering or construction precludes equipment or systems from performing as designed.

The periods during the first year to be excluded will be determined by the Administrator based on periodic reports of compliance with this emission limitation which must identify the times proposed for exclusion and provide the reasons for the exclusion, including the reasons for the outage of the control system. The report also must describe the actions taken to avoid the outage, to minimize its duration, and to reduce SO_2 emissions at the plant to the extent practicable while the control system was not fully operational. Whenever the time to be excluded exceeds a cumulative total of 30 days for any control system, the NGS owner or operator must file a report within 15 days addressing the history of, and prognosis for, the performance of the control equipment.

In addition to the foregoing, the Administrator will exclude from the compliance determination for a unit any periods of emissions from a unit for which the Administrator finds that the control equipment is out of service because of catastrophic failure of any control system which occurred for reasons beyond the control of the NGS participants and operators and could not have been prevented by good engineering practice. The Administrator will not exclude the period if the equipment failure was a consequence of a lack of appropriate maintenance; of

[21] As noted, section 169A of the Act establishes a national visibility goal, not an air quality standard or a specific emission standard. While the objective is to attain the goal, EPA's only mandate from Congress is to make reasonable progress toward the goal. For these reasons, EPA has more flexibility in selecting a control strategy to meet the visibility reasonable progress requirements than it does when a health-based air quality standard or specific emission standard must be met. Thus, in determining reasonable progress, EPA, by law, must consider the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance (see section 169A(g)(1) of the Act). Consideration of the pertinent statutory scheme and these specific factors has informed several aspects of today's action. Thus, for the policy and legal reasons stated, an annual rolling average emission limitation is acceptable for this case. Moreover, while this emission limitation is not expected to interfere with attainment of any other requirement of the Act, its adoption does not relieve NGS of any responsibility for meeting any air quality standard, emission standard, or other requirement of the Act.

[22] In the August 1991 supplemental notice, EPA published and requested comment on the parties' August 8, 1991 MOU and associated documents. During the public comment period, the parties further clarified their agreement and submitted a revised version of their MOU and recommended regulatory requirements to EPA, both documents dated August 22, 1991.

[23] A "boiler operating day" is specific for each steam-generating unit at NGS and is defined as a 24-hour calendar day (the period of time between 12:01 a.m. and 12:00 midnight in Page, Arizona) during which coal is combusted at that NGS unit for the entire 24 hours. This definition is consistent with the definition for "boiler operating day" in 40 CFR 60.41a: "a 24-hour period during which fossil fuel is combusted in a steam-generating unit for the entire 24 hours." The EPA notes that the set of previous 365 boiler operating days for each unit will be unique to that unit and thus the same set of calendar days probably will not be used for all three units in determining compliance.

intentional or negligent conduct or omissions of the NGS participants or operators or the control system design, construction, or operating contractors.

The final regulation requires that all equipment needed to comply with this regulation to be optimally operated consistent with good engineering practice to keep emissions at or below the emission limitation. The regulation also requires that following any control system outages, the system must be returned to full operation as expeditiously as practicable.

The final regulation provides that continuous emission monitors must be installed to determine compliance with the emission limitation. This equipment must meet the specifications listed in appendix B of 40 CFR part 60, the quality assurance procedures in appendix F of 40 CFR part 60, and the requirements for estimating emission rate in ng/J (or lb/MMBtu) set out in method 19, appendix A, 40 CFR part 60.[24] The NGS is required to report emissions and maintain records in accordance with the procedures in 40 CFR 60.7. In addition, EPA is establishing special notification procedures when an outage of a control system occurs. The NGS must notify the Administrator by telephone or by writing within one business day of any outage of the control system needed for compliance with the emission limitation and must submit a follow-up written report within 30 days of the repairs stating how the repairs were accomplished and justifying the amount of time taken for the repairs.

In the February 1991 notice, EPA proposed new NO_x and opacity limits on NGS emissions consistent with current emission levels. These were proposed due to a concern that certain SO_2 emission control equipment would cause increases in NO_x and PM (which are limited by opacity limitations) emissions at NGS which could affect visibility in GCNP. However, EPA does not have any evidence at this time that NO_x or PM emissions from NGS contribute significantly to visibility impairment in the GCNP. Further, the technology agreed to in the MOU will not increase NO_x or PM emissions from NGS. Moreover, the docket does not contain any evidence that NO_x or PM emissions from NGS would cause any such impairments after compliance with the final limitations promulgated today. Thus, EPA finds no need to include additional emission limitations for these pollutants.

E. Source/Impairment Relationship

In the February 1991 proposal, EPA estimated seasonal visual range changes which were based on a simple rollback model applied to average NGS contribution during the entire WHITEX study period. Based on this model, a 0.10 lb/MMBtu SO_2 emission limitation on NGS should result in an approximate 14 percent improvement in seasonal average standard visual range at Hopi Point.

During the comment period on EPA's February 1991 proposal, SRP submitted the results and analyses of the NGSVS which included estimates of NGS' contribution to visibility impairments in GCNP and specifically focused on Hopi Point. The NGSVS data indicate that controlling SO_2 emissions from NGS would result in at most a 2 percent improvement in the seasonal average standard visual range.[25]

Another study [26] submitted during the comment period, which was based on modelling of NGS' emissions over a long time period, indicated average wintertime improvements in the range of 4 to 8 percent if NGS emissions are reduced. This study is not based on any specific monitoring period nor was it based on an EPA-approved model.

The two intensive studies, WHITEX and NGSVS, included detailed aerosol, wind flow, and tracer analyses. They represent snapshots of NGS' impacts for their respective study periods. Based solely on wind-flow analysis during these periods, these studies varied significantly in concluding how often NGS emissions would be transported directly to the Hopi Point, the common GCNP monitoring site for both studies.

The major change in the seasonal average visibility results from more dramatic improvements expected to occur as a result of reducing emissions from NGS during certain meteorological conditions. Recent measurements of peak winter sulfate levels in the canyon approach four times the average winter levels. For certain periods analyzed in WHITEX and in NGSVS, NGS was shown to be the dominant contributor (more than 50 percent) to sulfates measured at Hopi Point. If certain humidity and wind conditions occur during the period when very high sulfate episodes are formed, reducing NGS emissions could result in increases in standard visual range up to 300 percent. Given the variability in meteorological conditions throughout the winter and from one winter to the next, it is impossible to exactly quantify the peak episodic expected improvement for any given period.

Photographic data taken during WHITEX indicated that airflow below the rim of the canyon could result in higher visibility impairment due to trapping of pollution. As a result, a new aerosol monitoring site at Indian Gardens (4,000 feet below the rim of the canyon) was established after the WHITEX study. This site has provided information since 1988 which confirms that the transport and conversion processes below the rim of the canyon are sometimes decoupled from the processes above the rim. Both NGSVS and the NPS report on WHITEX used the Hopi Point site, which is above the rim of the Canyon, as the basis for determining the NGS impact on GCNP. Data submitted during the comment period show that visibility below the rim is impaired more often and to a greater degree than is the visibility above the rim at Hopi Point.[27]

Taking into account the conclusions from both studies as well as other monitoring information at GCNP from long-term monitoring, EPA expects that reducing SO_2 emissions from NGS to 0.10 lb/MMBtu should improve the winter seasonal average visibility above the rim of the canyon approximately 7 percent principally due to improvements during episodes. Analyses of peak in-canyon sulfate levels during winter inversion episodes also lead EPA to conclude that reductions in NGS SO_2 emissions may well contribute to greater episodic visibility improvement resulting in, as discussed above, more than a 7 percent improvement in the seasonal average visibility below the rim of the canyon. However, EPA did not quantify the expected visibility improvement below the rim of the canyon due to the limited amount of data and understanding of the air transport

[24] For certain requirements in today's action (e.g., monitoring, reporting, recordkeeping, etc.), EPA has relied on its regulations governing standards for performance for new stationary sources. Those regulations have been relied on because they contain standardized procedures and requirements which apply to coal-fired steam-generating units. In addition, EPA has provided that the NGS owners or operators must comply with the requirements relied on in 40 CFR part 60 as in effect today. This approach was agreed to and recommended to EPA by SRP, GCT, and EDF in their August 22, 1991 MOU and associated documents. At this time, EPA believes that reliance on the regulations as they currently exist is reasonable in that they appear to provide adequate technical methods and procedures for determining and monitoring compliance with the SO_2 emission limitation established today.

[25] Average of the total light scattering to that part apportioned to NGS over the entire study period as found in appendix G of the NGSVS, Final Report, Draft Number 2, Sonoma Technology, Inc., April 16, 1991.

[26] See Docket A-89-02A, item IV-D-171.

[27] See Docket A-89-02A, items IV-D-164, IV-D-346, and IV-G-3.

mechanisms below the rim of the canyon.

F. Schedule of Compliance

As noted above, compliance with the emission limitation will be phased-in by unit on the following schedule:

1. One unit by November 19, 1997.
2. Two units by November 19, 1998.
3. All units by August 19, 1999.

The phasing in of the emission limitation will allow NGS to initiate operation of the control systems one at a time.

To ensure that NGS complies with the emission limitation by the dates specified, EPA has established a schedule of compliance containing interim deadlines as follow.

Date of binding contract for architectural/Engineering firm to design and procure the control system needed for compliance.	June 1992.
Start of onsite construction of the control system for the first unit.	Jan. 1995.
Initiation of startup testing:	
First unit	May 1997.
Second unit	May 1998.
Third unit	Feb. 1999.

The Administrator may extend the interim deadlines if NGS can demonstrate that compliance with the final deadlines for compliance, stated above, will not be affected.

G. Maintenance Schedule

The final regulation provides that by March 16, 1993, and every March 16th thereafter, the NGS owner or operator will prepare a long-term maintenance plan for NGS that maximizes winter down-time while accommodating the maintenance requirements for the other generating facilities on the NGS grid. The plan will cover the period from March 16 to March 15 of the next year and must provide at least a full 6 unit-weeks of maintenance for NGS in the November 1 to March 15 period, except as provided below, to further reduce SO_2 emissions during the winter. The plan will be developed as to be consistent with the criteria established by the Western States Coordinating Council of the North American Electric Reliability Council to ensure adequate reserve margin. The full 6 unit-weeks of winter maintenance need not occur if any of the following circumstances arise.

1. There is no need for 6 unit-weeks of scheduled periodic maintenance in the March 16–March 15 year covered by the plan.

2. The reserve margin on any electrical system served by NGS would fall to an inadequate level, as defined by the criteria referenced above. In such case the scheduled maintenance may be moved out of the November 1 to March 15 period.

3. The cost of compliance with this provision would be excessive. Costs of compliance would be considered excessive when the economic savings to the participants of moving NGS' maintenance out of the November 1 to March 15 period exceeds $50,000 per unit-day of maintenance moved.

4. A major forced outage at a unit occurs outside the winter months, and necessary periodic maintenance occurs during the period of forced outage.

The NGS owner or operator must demonstrate to the satisfaction of the Administrator that one or more of the events listed above render unnecessary or unreasonable a full 6 unit-weeks of scheduled maintenance during the specified winter period. Where 6 unit-weeks of scheduled maintenance is unnecessary or unreasonable, the NGS owner or operator must nevertheless make best efforts to conduct as much scheduled maintenance as practicable during the winter period. If NGS does not conduct its scheduled winter maintenance (up to 6 unit-weeks), it must report to EPA why it did not do so.

When maintenance is being conducted on a unit, the unit will not be in operation and therefore not emitting SO_2. Thus, the shifting of NGS maintenance to the wintertime period will further reduce NGS SO_2 emissions during the period when NGS is suspected to have its greatest impact on the GCNP. Further, because the scheduled winter maintenance requirement will be implemented in the winter of 1993–1994, it will have the effect of making a degree of reasonable progress toward the national visibility goal before final compliance with the emission limitation is required. Because NGS must, for normal operation, conduct this maintenance, rescheduling it in the wintertime period should have little economic impact on NGS.

H. Air Quality Review

The installation and operation of a wet FGD control system at NGS (the proven available technology that EPA anticipates will be used) will lower the exhaust gas temperature from the stacks and could reduce the plume rise above the NGS stacks. The EPA and the Arizona Department of Environmental Quality reviewed the need to reheat the exhaust gases to ensure appropriate plume rise with the lower gas exit temperatures associated with meeting a 0.10 lb/MMBtu emission limitation using wet FGD and found that reheating of the exhaust gas will not be necessary to prevent a violation of any national ambient air quality standards. If the exhaust gas is not reheated, the control cost will be reduced significantly.

If NGS were to select a wet FGD SO_2 control system, the water content of the plume would increase. Under certain conditions, a white steam plume will occur as the water vapors condenses before it dissipates. This steam plume may be visible near the stack. However, it will not cause any visibility impairment in GCNP or surrounding mandatory Class I Federal areas and will not interfere with the attainment of any national ambient air quality standards. Such steam plumes are not subject to any State or Federal visual emission standards or regulations.

III. Response to Comments

The September 5, 1989, February 8, 1991, and August 13, 1991 notices requested comment on a variety of issues relating to attribution of impairment, cost of controls, and the benefit expected from the controls. In addition, EPA held a public hearing on March 18 and 19, 1991 during which EPA received comments on its February 1991 proposal.

Under section 307(d) of the Act, today's action must be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period. The EPA has carried out this duty. Moreover, modifications to the proposed rule have been made in response to public comments. The EPA's final control strategy for NGS largely embodies public comments received from representatives of GCT, EDF, and SRP which, in turn, were subject to public comment (see, e.g., 56 FR 38399 (August 13, 1991)). Further, in its February 1991 proposal, EPA requested comment on several control options including, but not limited to, the following rule elements and specific regulatory alternatives:

1. Emission limitations, including limitations ranging between 0.50 and 0.10 lb/MMBtu.

2. Averaging times, including a 3-hour, 30-day, and annual averaging period.

3. Implementation schedules, including one providing for plant-wide compliance by the year 2000. As noted below, EPA received many comments in response to the February 1991 proposal supporting, in part, the control elements adopted by EPA, in total, today. For example, many citizens and representatives of environmental organizations submitted comments supporting a 0.10 lb/MMBtu emission limitation, the emission limitation adopted today. Many representatives of

industry and business submitted comments supporting an annual averaging period and a long compliance schedule.

During the initial public comment period, EPA received over 400 comments including the public hearing transcript. A summary of the significant comments, criticisms, and new data submitted in written or verbal presentations during the public comment period and EPA's responses are provided below and in supporting documents which have been placed in Docket A–89–02A.[28], [29]

During the supplemental comment period, EPA received 21 additional comments. Two commenters objected to requiring any additional pollution controls on NGS because of the uncertainty in the impairment attribution. Eighteen commenters generally supported the adoption of a control strategy consistent with the MOU, although one commenter expresssed some concerns about the compliance schedule and exemption from winter maintenance. One commenter objected because of the delayed compliance and the level of control.

The SRP, GCT, EDF, the Wilderness Society, the National Wildlife Federation, and the Sierra Club have conditionally withdrawn prior comments that are inconsistent with the August MOU entered by representatives of SRP, GCT, and EDF and associated recommendations to the Agency. In light of this withdrawal, some of the comments discussed here and in the supplementary response to comments documents placed in the rulemaking docket are no longer pending before the Agency and, clearly, no longer "significant" within the meaning of section 307(d) of the Act. Nevertheless, EPA has discussed them in order to help the public better understand today's action.

A. Attribution

The EPA received a large number of comments on its attribution of visibility impairment in the GCNP to NGS. These comments expressed a variety of opinions including statements that EPA had already made an attribution decision and that EPA should not revisit that decision, that more than adequate information was available to make such a decision and that it is clear from the record that certain visibility impairment episodes in GCNP are attributable to NGS, that EPA should not make a decision to attribute the impairment to NGS until it developed a strong source-impairment relationship, and that EPA should not attribute the impairment to NGS since it is not the sole cause of the impairment in the GCNP. In its February 1991 proposal, EPA reopened its comment period on and explicitly requested public comment on its preliminary attribution decision. Therefore, EPA's proposed attribution decision was subject to public comment. As explained earlier, EPA has reviewed the available technical data and analyses and has concluded that episodic visibility impairment in GCNP is reasonably attributable to NGS.

B. Source-Impairment Relationship

Once EPA attributed impairment to NGS, it then had to develop a source-impairment relationship in order to estimate the expected improvements in visibility resulting from the installation of the controls.

In the February 1991 proposal, EPA provided calculations of the relationship between reductions in SO_2 emissions from NGS and the visibility at the GCNP. The calculations were based on the overall findings of the WHITEX report which used several techniques to apportion NGS' contribution to sulfates and the resulting haze at GCNP. The EPA calculated two measures of visibility improvements, one seasonal average change in standard visual range and the other a distribution of days where control of NGS would result in several levels of contrast changes. The EPA received several comments that its calculations used to estimate the distribution of days when the reduction in SO_2 emissions from NGS would result in perceptible, quite noticeable, and very apparent change in contrast in GCNP were in error because the final contrast assessment did not take into account natural (Rayleigh) atmospheric scattering of light. The EPA agrees that these calculations did not take into account Rayleigh scattering. However, EPA's seasonal visual range estimated in the February 1991 proposal, did not include error as some commenters had alleged and is relied on in today's action.

The EPA has received new information during the comment period which has improved its understanding of the source-impairment relationship. Based on this and other available information, EPA has refined the source-impairment relationship and concluded that it is as described in the Source-Impairment discussion in "Today's Action" above.

C. Emission Limitation

Individuals and groups that commented on the emission limitation generally requested that EPA adopt a requirement for the maximum level of control or no controls at all. No commenters supported the 50 percent control level. Some commenters supported an SRP proposal, now withdrawn, which called for a 70 percent level. Most commenters on the emission limitation supported a 90 or 95 percent control level. The commenters that did not support controls did so because of the cost of the controls and/or the alleged lack of a strong demonstrated source-impairment relationship. As discussed, EPA believes that an adequate source-impairment relationship does exist for EPA to require NGS to control its emissions. The control strategy that EPA is promulgating today will provide a 90 percent reduction in the SO_2 emissions from NGS at a cost below that which would have been necessary to meet the control strategy EPA proposed in February 1991. Thus, the control strategy adopted by EPA satisfies both groups of commenters in that it will result in a greater emission reduction at a lower cost. Further, as noted previously, EPA must balance a number of factors in taking action today under section 169A. Such action must be balanced in light of EPA's statutory mandate set out in section 169A to make "reasonable progress" toward the national goal of "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from man-made air pollution." The EPA carefully has weighed, for example, the estimated cost of compliance with today's emission limitation and the visibility benefits expected to be realized and concluded that today's control strategy, taken together, is a reasonable exercise of its delegated rulemaking authority under section 169A.

D. Averaging Time

Several commenters supported a short (3-hour) averaging time stating that it would ensure that maximum visibility protection. Some of these comments have been withdrawn. Other commenters supported a longer (30 days to annual) averaging time stating that it would eliminate the need for expensive backup control equipment. The EPA's adoption of the control strategy, which includes an annual rolling average emission limitation, will eliminate the need for the backup equipment.

[28] JCM Environmental, "Summary of Public Comments, Proposed Revision to Arizona Visibility FIP for Navajo Generating Station" July 1991.

[29] See U.S. EPA, "Response to Public Comments, Proposed Revisions to Arizona Visibility FIP," September 1991.

However, the control strategy also includes a stringent emission limitation and winter maintenance scheduling to ensure maximum visibility protection.

E. Compliance Schedule

Several commenters noted that section 169A of the Act requires that BART emission limitations be met within 5 years. Some of the commenters have since withdrawn these comments. Others commented that it was legally permissible for compliance with a BART emission limitation to extend beyond 5 years. In EPA's August 1991 notice reopening the comment period, EPA published a memorandum from its Office of General Counsel that described the legal basis for the 1997, 1998, and 1999 compliance schedule adopted today. No adverse comments addressing the legal basis were received during the supplemental comment period. Therefore, as discussed in the August 1991 notice, EPA is relying principally on the reasonable progress requirements of section 169A(b)(2). The requirements of that section, which encompasses both the long-term strategy and BART provisions, are met by today's action.

F. BART Guidelines

In the February 1991 proposal (56 FR 5178 col. 1), EPA requested comments on two potential revisions to the BART Guidelines. First, EPA requested comment on the continued use of the new source performance standards as a base for the BART analysis. Second, EPA requested comment on whether it should include the consideration of the value of marketable allowances when estimating the cost of control systems. The EPA received several comments on both issues. However, in making its final determination on today's action, neither of these issues were significant. Therefore, EPA is not making a final decision on whether to revise the BART Guidelines at this time.

G. Cost of Controls

Several commenters alleged that EPA may have overestimated the economic impact of the controls. They also noted that costs are quite small when divided up among the various consumers. Other commenters alleged that the increased cost will have a significant impact on the consumers. The EPA has recalculated the cost of the controls of today's final action based upon the new information provided by SRP. Those numbers may be overestimates of the actual cost of control. Even if the actual control costs are consistent with SRP and EPA estimates, as noted, EPA has concluded that today's action achieves greater visibility benefit at less cost than EPA's February 1991 proposed option. Moreover, by balancing the estimated costs, expected visibility improvement, and other relevant factors EPA has concluded that the expected improvements in the visibility in the GCNP justify the estimated costs.

Several commenters noted that the recipients of CAP water face a greater price increase than electricity customers or will otherwise bear a significant economic hardship as a result of the control costs of today's action. As discussed in the Regulatory Flexibility Act (RFA) section below, EPA cannot estimate every potential indirect cost of today's action. Nevertheless, EPA has carefully considered the potential impacts of today's action on recipients of CAP water, including farmers receiving such water. The Central Arizona Water Conservation District (CAWCD) submitted an estimate of a 7 percent to 10 percent increase in agricultural water rates, resulting in an increased water cost of nearly $10,000 per year for a typical family farmer. The EPA estimates such an increase would be less than a 2 percent increase in the total variable costs of a typical farm. At the present time, agricultural water in Arizona receives a substantial Federal subsidy. Current Federal policy calls for phasing out the water subsidy. When the subsidy is eliminated, the impact of the increased cost at NGS will be an even smaller percentage of both total variable cost and total water cost. The EPA has weighed and balanced the costs of today's action, the expected visibility improvement, and other requisite considerations and concluded that today's control strategy, taken together, constitutes a reasonable exercise of EPA's delegated rulemaking authority under section 169A of the Act.

H. Impacts on Other Class I Areas

Several commenters noted the impact of NGS on the other class I areas in the region known as the "Golden Circle." Two of the commenters provided photographs and modeling to support their statements. The EPA agrees that NGS could contribute to the visibility impairment in those other areas, but the data and modeling that were presented were not adequate for EPA to use in making a definitive determination on attribution of the impairment in those areas to NGS. However, the controls that are being required today will significantly reduce if not eliminate NGS' contribution to the visibility impairment in those areas.

I Seasonal Controls

In the February 1991 proposal, EPA requested comment on whether, as a policy matter, it should allow seasonal controls at NGS and whether, if technically justified, seasonal controls would be legally permissible. Several commenters recommended that EPA adopt a control strategy for NGS that include seasonal controls and/or commented that seasonal controls could lawfully constitute an emission limitation representing BART under section 169A. Several others commented that the technical record did not support seasonal controls and/or commented that as a legal matter seasonal controls could not constitute an emission limitation under section 169A. During the comment period, the GCT and its consultants presented analyses, which are in the rulemaking docket, demonstrating that NGS' emissions may significantly impair visibility year-round at the GCNP as well as other Class I areas in the region. For example, a simple transport and transformation model of NGS emissions over a 5-year period indicated impacts at GCNP in seasons other than winter. While the degree of visibility impairment during these impacts is less than those documented by other studies during the winter period, the impacts are nevertheless strongly suggestive of attributable impairment in non-winter seasons. Further, the analyses suggest that NGS emissions could impair visibility in surrounding Class I areas between 60 and 80 percent of the time year-round. For the foregoing reasons, EPA concludes that year-round controls are appropriate in this action. The EPA's decision also is consistent with the recommendations of the parties. While EPA's regulations do not cover regional haze effects from existing sources, EPA also notes that today's action will lead to regional haze benefits as well. Therefore, EPA need not determine whether such controls would be legally permissible.

J. Monetary Benefits

In the February 1991 proposal, EPA noted that it was not legally required to estimate the monetary benefits associated with improving visibility in the GCNP. However, as a check of the reasonableness of its approach, EPA evaluated and considered the benefit analysis developed as a part of the draft RIA for the proposed rule. The EPA requested comment on its monetary benefits analysis and a monetary benefits analysis conducted by SRP. Some commenters stated that EPA and

SRP had underestimated the monetary benefits while others indicated that EPA's benefits were overstated. Because the benefits analysis forms no part of legal basis for today's action, EPA is not responding to those comments.

IV. EDF v. Reilly

Today's action regarding NGS completes EPA's obligations under the settlement agreement in *EDF* v. *Reilly*, No. C82–6850 (N.D. Cal.), and under the first round of SIP/FIP planning called for in the visibility regulations.

V. Nonprecedential Effect of This Action

Today's promulgation is limited to the rulemaking requiring an SO_2 emission limitation for NGS in order to remedy a single-source visibility impairment in the GCNP that is traceable to NGS and, hence, remediable under EPA's 1980 visibility regulations. As such, it has no direct precedential effect on any other rulemaking action EPA might undertake in the future regarding other existing sources or Class I areas. This is so because the outcome of this rulemaking has been highly dependent upon facts and circumstances that are unique to this proceeding and thus does not apply to other cases. For example, the tracer studies and other analyses contained in the WHITEX and NGSVS reports that are key to a showing that impairment at GCNP is traceable to NGS are not being approved for use in any other rulemaking addressing other potential sources of visibility impairment. Should EPA or State agencies conduct visibility rulemakings regarding other Class I areas and other existing sources of pollution in the future, they will need to rely on attribution techniques appropriate for those other areas and sources in order to make reasoned regulatory decisions. They will not be able to rely solely on WHITEX or NGSVS findings that specifically address the GCNP and NGS to determine the existence of impairment that is reasonably attributable to any such other source. Likewise, neither the methodology used for establishing the expected improvement in visibility that could be anticipated to result from use of alternative SO_2 control systems nor the final emission limit being promulgated today will have direct precedential effect elsewhere. The statutory requirement that EPA weigh various factors before reaching a decision is by nature a case-specific process.

A. Classification

Executive Order No. 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the order and "to the extent permitted by law," to prepare and consider an RIA in connection with every major rule. Major rules are defined as those likely to result in:

1. An annual effect on the economy of $100 million or more.

2. A major increase in costs or prices for consumers or individual industries; Federal, State, or local government agencies; or geographic region.

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The EPA judged the February 1991 proposed regulation for NGS to be a major rule based on projected annualized costs potentially in excess of $100 million. The EPA then prepared a preliminary RIA that included estimates of costs, benefits, and net benefits for three control options. The preliminary analysis, titled "Regulatory Impact Analysis of a Revision of the Federal Implementation Plan for the State of Arizona to Include SO_2 Controls for the Navajo Generating Station," and an addendum, titled "Addendum to the Regulatory Impact Analysis of a Revision of the Federal Implementation Plan for the State of Arizona to Include SO_2 Controls for the Navajo Generating Station" are available in Docket A–89–02A.

In light of the reduced estimated cost of this rule, the Office of Management and Budget (OMB) has exempted this action from the RIA requirements. Therefore, EPA did not finalize the preliminary RIA.

B. Paperwork Reduction Act

This rule will impose a modest reporting burden on the participants of the NGS to enable EPA to ensure compliance with the emission limits. Because the reporting burden affects only a single source, it is not subject to OMB review under the Paperwork Reduction Act.

C. Section 317(c) Economic Impact Assessment

This action is taken pursuant to sections 169A and 110(c) of the Act, and a section 317(c) economic impact assessment may not be required. However, all of the analytical requirements of section 317(c) have been met. The section 317(c)(1) analysis of alternative regulations, and the impact of varying the effective date, are essential considerations in promulgating this revision to the FIP for Arizona. Each of the section 317(c) requirements are included in the BART analysis prepared by EPA. Portions of the economic impact assessment are revised in this notice based on additional information and comments provided to EPA.

D. Regulatory Flexibility Act

Under the RFA, 5 U.S.C. 601–612, EPA must prepare for rules subject to notice and comment rulemaking initial and final regulatory flexibility analyses describing the impact on small entities which includes small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000. The requirement of preparing such is inapplicable, however, if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 605(b)).

In the February 1991 proposal, the Administrator certified that the proposed rule would not have a significant impact on a substantial number of small entities because none of the participants of NGS are classified as small according to the guidelines developed by the Small Business Administration. Moreover, EPA estimated that for all of the electric utilities using NGS power, the impact on electric utility rates would be substantially less than 5 percent.

Similarly, the emission limitation being established today does not have a direct impact on and will not apply to a substantial number of small entities because none of the participants of NGS subject to today's action are classified as small according to the guidelines developed by the Small Business Administration. Further, during the comment period on the February 1991 proposal and the August 1991 supplemental notice, SRP, NPC, and CAWCD submitted comments indicating that the potential indirect costs that may be passed on to customers of the NGS participants were less than those estimated by EPA.

The comments on potential indirect costs incurred by rate payers submitted by SRP, NPC, CAWCD, and others do not address the costs incurred directly by the NGS participants, the entities that are subject to and directly impacted by today's action and that do not qualify as "small." Further, except for the general comments submitted by the Bureau of Reclamation, the comments do not address EPA's conclusion under the RFA that the proposed rule would not have a significant economic impact on a substantial number of small entities. Before discussing the comments, EPA notes that it cannot and is not legally required to foresee all of

the indirect impacts associated with today's action. The EPA cannot anticipate how the NGS participants will seek to pay for the costs associated with today's action, the decisions that public utility commissions will confront and make, etc. Nevertheless, EPA has considered and attempted to respond to those comments addressing indirect costs impacting potential small entities in order to explain more fully for the public the Administrator's finding under the RFA that today's final rule will not have a significant impact on a substantial number of small entities.

In the draft RIA, EPA estimated a $92 million per year control cost would increase SRP's and NPC's electric rates by a maximum of 3.1 percent and 4.4 percent, respectively.[30] The EPA estimated that of the six utilities receiving power from NGS, these two would experience the greatest electric rate increases if power generation costs were passed through completely to consumers because both SRP and NPC rely on 25 percent of NGS electricity for their total sales and each has a low average cost/kWh relative to the other four participants. Further, EPA estimated that these percentage estimates likely were overestimates due to various dampening effects omitted from the calculation.

The NPC submitted comments on EPA's February 1991 proposal in which it estimated that the control costs would result in a 2.27 percent increase for its residential customers. The SRP also submitted comments on the February 1991 proposal in which it estimated that a control strategy costing $90 million would result in a 2.1 percent to 2.5 percent increase to its rate payers. These estimated increases are less than the 5 percent impact estimated in EPA's February 1991 proposal. Further, these costs may be overestimated in that, for example, today's control option is cheaper than that advanced in the February 1991 proposal. In addition, the sale of SO_2 allowances under the SO_2 allowance trading program established by EPA under title IV of the Act may mitigate costs.

In the draft RIA for the February 1991 proposal, EPA also estimated the economic impact on CAP water users. The EPA estimated an 18 percent increase in water costs for farmers receiving agricultural water from the CAP. This estimate translated into a $11/acre-foot increase (3 cents per 1000 gallons of water) raising the total annual variable costs for a 800–900 acre farm (the size of the average farm served by CAP) by 3–4 percent per year ($22,000/year). The EPA further explained why these costs were anticipated to be overestimates and how the costs compared with unsubsidized non-CAP water.

At the public hearing on the February 1991 proposal, a member of the Board of Directors of the CAWCD testified that their analysis concluded the NGS control costs would result in a $4.50 per acre-foot increase in CAP water, less than EPA's $11 estimate. The CAWCD further testified that the $4.50/acre-foot would translate into an annual cost increase of $7,200 for the average farmer irrigating 800 acres. In comments dated September 6, 1991 addressing the proposal identified in EPA's August 1991 supplemental notice, CAWCD generally commented that the control costs will add 7 to 10 percent to the annual costs of its water delivery and, in turn, additional costs of nearly $10,000 per year for CAP water for a typical farmer, costs of approximately $3 million annually on all of its municipal water suppliers taken together, and a $1.5 million annual increase on Indian tribes.

As evident, the CAWCD cost figures are inconsistent in that testimony at the public hearing and the written text accompanying that testimony estimated an annual impact of $7,200 on the average farmer, plus comments dated September 6, 1991 estimated that costs would be "nearly $10,000 per year." The inconsistency is further perplexing in that the option advanced in the August 1991 notice was less expensive than that identified in the February 1991 proposal. Because CAWCD's comments on costs are general and undocumented, EPA cannot check their derivation. In any case, both cost figures are less than half of that identified in EPA's draft RIA. The EPA estimates that the $7,200 and $10,000 cost figures submitted by CAWCD would translate into a 1 percent to 2 percent increase in total variable costs for the average farmer. The EPA has no reason to believe that the percentage increase in costs of water for municipal suppliers or Indian tribes will be substantially different from the economic impact on farmers purchasing CAP water. Further, as noted above, the owner of NGS may substantially mitigate the costs of today's action by selling SO_2 allowances. This, in turn, should curb any indirect costs incurred.

Finally, in commenting on EPA's February 1991 proposal, the Bureau of Reclamation (the Bureau) generally commented on EPA's conclusion that an initial RFA was unnecessary by noting that testimony at the public hearing provided evidence of adverse impacts on small businesses, farmers, governmental entities, and Indian tribes. In its only example of cost impacts, the Bureau commented that the agricultural customers of the CAWCD could experience increases in their water rates of approximately $10 per acre-foot which, they commented, would result in a 16 percent increase in annual costs for CAWCD's large customers.

The Bureau's comments that agricultural customers of CAWCD could experience increases in water rates of approximately $10 per acre-foot are inconsistent with CAWCD's own comments which suggested an impact of approximately $4.50 per acre-foot and, further, were not substantiated. In addition, the Bureau's $10 per acre-foot estimate is lower than EPA's more conservative estimate. The Bureau's comments also were based on the February 1991 option which, as noted, is more costly than today's final action. Based on the CAWCD comments, EPA estimates that today's action will result in less than a 2 percent increase in the total variable costs for the average CAWCD farmer.

As noted, EPA has estimated the cost impacts on the residential customers of SRP and NPC. Residential customers are usually the category of consumers bearing the greatest impact in cost increases because most utility rate structures typically charge incrementally less for the more power that is consumed. Further, as noted, EPA expects the impacts on the residential customers of NPC to be higher than any other customers of the NGS participants. Thus, EPA's estimate of the impact on NPC residential customers serves as a worst-case check on the potential electricity rate impacts on other potential customers. The impact on all potential small entities, including school districts, local governments, business establishments, not-for-profit enterprises, etc., should be similar or smaller. Thus, not only were the Bureau's general claims about potential impacts on small entities undocumented, but EPA believes its consideration of the impacts on residential rate payers affords a reasonable check of the potential impacts on other NGS electricity customers.

Accordingly, for all of the reasons stated, I hereby certify that the regulation being promulgated today will not have a significant economic impact on a substantial number of small entities.

[30] See generally "Draft Regulatory Impact Analysis of a Revision of the Federal Implementation Plan for the State of Arizona to Include SO_2 Controls for the Navajo Generating Station."

E. Interagency Review

This final rule was submitted to OMB for review. Drafts submitted to OMB for review, written comments on these drafts by OMB or other agencies, and FPA's written responses to such comments have been placed in the rulemaking docket.

List of Subjects in 40 CFR Part 52

Air pollution control, Nitrogen dioxide, Particulate matter, Carbon monoxide, Ozone, Lead, Sulfur oxides, Reporting and recordkeeping requirements.

Dated: September 18, 1991.

William K. Reilly,

Administrator.

PART 52—[AMENDED]

1. The authority for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.145 is amended by adding paragraph (d) to read as follows:

§ 52.145 Visibility protection.

* * * * *

(d) This paragraph is applicable to the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3 at the Navajo Generating Station in the Northern Arizona Intrastate Air Quality Control Region (§ 81.270 of this chapter).

(1) *Definitions.*

Affected Unit(s) means the steam-generating unit(s) at the Navajo Generating Station, all of which are subject to the emission limitation in paragraph (d)(2) of this section, that has accumulated at least 365 boiler operating days since the passage of the date defined in paragraph (d)(6) of this section applicable to it.

Administrator means the Administrator of EPA or his/her designee.

Boiler Operating Day for each of the boiler units at the Navajo Generating Station is defined as a 24-hour calendar day (the period of time between 12:01 a.m. and 12:00 midnight in Page, Arizona) during which coal is combusted in that unit for the entire 24 hours.

Owner or Operator means the owner, participant in, or operator of the Navajo Generating Station to which this paragraph is applicable.

Unit-Week of Maintenance means a period of 7 days during which a fossil fuel-fired steam-generating unit is under repair, and no coal is combusted in the unit.

(2) *Emission limitation.* No owner or operator shall discharge or cause the discharge of sulfur oxides into the atmosphere in excess of 42 ng/J [0.10 pound per million British thermal units (lb/MMBtu)] heat input.

(3) *Compliance determination.* Until at least one unit qualifies as an affected unit, no compliance determination is appropriate. As each unit qualifies for treatment as an affected unit, it shall be included in the compliance determination. Compliance with this emission limit shall be determined daily on a plant-wide rolling annual basis as follows:

(i) For each boiler operating day at each steam generating unit subject to the emission limitation in paragraph (d)(2) of this section, the owner or operator shall record the unit's hourly SO_2 emissions using the data from the continuous emission monitoring systems, [required in paragraph (d)(4) of this section] and the daily electric energy generated by the unit (in megawatt-hours) as measured by the megawatt-hour meter for the unit.

(ii) Compute the average daily SO_2 emission rate in ng/J (lb/MMBtu) following the procedures set out in method 19, appendix A, 40 CFR part 60 in effect on October 3, 1991.

(iii) For each boiler operating day for each affected unit, calculate the product of the daily SO_2 emission rate (computed according to paragraph (d)(3)(ii) of this section) and the daily electric energy generated (recorded according to paragraph (d)(3)(i) of this section) for each unit.

(iv) For each affected unit, identify the previous 365 boiler operating days to be used in the compliance determination. Except as provided in paragraphs (d)(9) and (d)(10) of this section, all of the immediately preceding 365 boiler operating days will be used for compliance determinations.

(v) Sum, for all affected units, the products of the daily SO_2 emission rate-electric energy generated (as calculated according to paragraph (d)(3)(ii) of this section) for the boiler operating days identified in paragraph (d)(3)(iii) of this section.

(vi) Sum, for all affected units, the daily electric energy generated (recorded according to paragraph (d)(3)(i) of this section) for the boiler operating days identified in paragraph (d)(3)(iii) of this section.

(vii) Calculate the weighted plant-wide annual average SO_2 emission rate by dividing the sum of the products determined according to iv above by the sum of the electric energy generated determined according to paragraph (d)(3)(v) of this section.

(viii) The weighted plant-wide annual average SO_2 emission rate shall be used to determine compliance with the emission limitation in paragraph (d)(2) of this section.

(4) *Continuous emission monitoring.* The owner or operator shall install, maintain, and operate continuous emission monitoring systems to determine compliance with the emission limitation in paragraph (d)(2) of this section as calculated in paragraph (d)(3) of this section. This equipment shall meet the specifications in appendix B of 40 CFR part 60 in effect on October 3, 1991. The owner or operator shall comply with the quality assurance procedures for continuous emission monitoring systems found in appendix F of 40 CFR part 60 in effect on October 3, 1991.

(5) *Reporting requirements.* For each steam generating unit subject to the emission limitation in paragraph (d)(2) of this section, the owner or operator:

(i) Shall furnish the Administrator written notification of the SO_2, oxygen, and carbon dioxide emissions according to the procedures found in 40 CFR § 60.7 in effect on October 3, 1991.

(ii) Shall furnish the Administrator written notification of the daily electric energy generated in megawatt-hours.

(iii) Shall maintain records according to the procedures in 40 CFR 60.7 in effect on October 3, 1991.

(iv) Shall notify the Administrator by telephone or in writing within one business day of any outage of the control system needed for compliance with the emission limitation in paragraph (d)(2) of this section and shall submit a follow-up written report within 30 days of the repairs stating how the repairs were accomplished and justifying the amount of time taken for the repairs.

(6) *Compliance dates.* The requirements of this paragraph shall be applicable to one unit at the Navajo Generating Station beginning November 19, 1997, to two units beginning November 19, 1998, and to all units beginning on August 19, 1999.

(7) *Schedule of compliance.* The owner or operator shall take the following actions by the dates specified:

(i) By June 1, 1992, award binding contracts to an architectural and engineering firm to design and procure the control system needed for compliance with the emission limitation in paragraph (d)(2) of this section.

(ii) By January 1, 1995, initiate on-site construction or installation of a control system for the first unit.

(iii) By May 1, 1997, initiate start-up testing of the control system for the first unit.

(iv) By May 1, 1998, initiate start-up testing of the control system for the second unit.

(v) By February 1, 1999, initiate start-up testing of the control system for the third unit.

The interim deadlines will be extended if the owner or operators can demonstrate to the Administrator that compliance with the deadlines in paragraph (d)(6) of this section will not be affected.

(8) *Reporting on compliance schedule.* Within 30 days after the specified date for each deadline in the schedule of compliance (paragraph (d)(7) of this section, the owner or operator shall notify the Administrator in writing whether the deadline was met. If it was not met the notice shall include an explanation why it was not met and the steps which shall be taken to ensure future deadlines will be met.

(9) *Exclusion for equipment failure during initial operation.* For each unit, in determining compliance for the first year that such unit is required to meet the emission limitation in paragraph (d)(2) of this section, periods during which one of the following conditions are met shall be excluded:

(i) Equipment or systems do not meet designer's or manufacturer's performance expectations.

(ii) Field installation including engineering or construction precludes equipment or systems from performing as designed.

The periods to be excluded shall be determined by the Administrator based on the periodic reports of compliance with the emission limitation in paragraph (d)(2) of this section which shall identify the times proposed for exclusion and provide the reasons for the exclusion, including the reasons for the control system outage. The report also shall describe the actions taken to avoid the outage, to minimize its duration, and to reduce SO_2 emissions at the plant to the extent practicable while the control system was not fully operational. Whenever the time to be excluded exceeds a cumulative total of 30 days for any control system for any affected unit, the owner or operators shall submit a report within 15 days addressing the history of and prognosis for the performance of the control system.

(10) *Exclusion for catastrophic failure.* In addition to the exclusion of periods allowed in paragraph (d)(9) of this section, any periods of emissions from an affected unit for which the Administrator finds that the control equipment or system for such unit is out of service because of catastrophic failure of the control system which occurred for reasons beyond the control of the owner or operators and could not have been prevented by good engineering practices will be excluded from the compliance determination. Events which are the consequence of lack of appropriate maintenance or of intentional or negligent conduct or omissions of the owner or operators or the control system design, construction, or operating contractors do not constitute catastrophic failure.

(11) *Equipment operation.* The owner or operator shall optimally operate all equipment or systems needed to comply with the requirements of this paragraph consistent with good engineering practices to keep emissions at or below the emission limitation in paragraph (d)(2) of this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(12) *Maintenance scheduling.* On March 16 of each year starting in 1993, the owner or operator shall prepare and submit to the Administrator a long-term maintenance plan for the Navajo Generating Station which accommodates the maintenance requirements for the other generating facilities on the Navajo Generating Station grid covering the period from March 16 to March 15 of the next year and showing at least 6 unit-weeks of maintenance for the Navajo Generating Station during the November 1 to March 15 period, except as provided in paragraph (d)(13) of this section. This plan shall be developed consistent with the criteria established by the Western States Coordinating Council of the North American Electric Reliability Council to ensure an adequate reserve margin of electric generating capacity. At the time that a plan is transmitted to the Administrator, the owner or operator shall notify the Administrator in writing if less than the full scheduled unit-weeks of maintenance were conducted for the period covered by the previous plan and shall furnish a written report stating how that year qualified for one of the exceptions identified in paragraph (d)(13) of this section.

(13) *Exceptions for maintenance scheduling.* The owner or operator shall conduct a full 6 unit-weeks of maintenance in accordance with the plan required in paragraph (d)(12) of this section unless the owner or operator can demonstrate to the satisfaction of the Administrator that a full 6 unit-weeks of maintenance during the November 1 to March 15 period should not be required because of the following:

(i) There is no need for 6 unit-weeks of scheduled periodic maintenance in the year covered by the plan;

(ii) The reserve margin on any electrical system served by the Navajo Generating Station would fall to an inadequate level, as defined by the criteria referred to in paragraph (d)(12) of this section.

(iii) The cost of compliance with this requirement would be excessive. The cost of compliance would be excessive when the economic savings to the owner or operator of moving maintenance out of the November 1 to March 15 period exceeds $50,000 per unit-day of maintenance moved.

(iv) A major forced outage at a unit occurs outside of the November 1 to March 15 period, and necessary periodic maintenance occurs during the period of forced outage.

If the Administrator determines that a full 6 unit-weeks of maintenance during the November 1 to March 15 period should not be required, the owner or operator shall nevertheless conduct that amount of scheduled maintenance that is not precluded by the Administrator. Generally, the owner or operator shall make best efforts to conduct as much scheduled maintenance as practicable during the November 1 to March 15 period.

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October 3, 1991

Part IV

Environmental Protection Agency

40 CFR Part 185

Tolerance Revocation for Dichlorvos; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 185

[OPP-300237; FRL-3941-8]

RIN 2070-AC18

Dichlorvos; Revocation of Food Additive Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke the food additive regulation for residues of the pesticide dichlorvos (2,2-dichlorvinyl dimethyl phosphate), also known as DDVP, in or on packaged or bagged nonperishable processed food. This proposed rule is being initiated because the Agency has determined that this food additive regulation is inconsistent with the Delaney Clause in section 409 of the Federal Food, Drug, and Cosmetic Act.

DATES: Written comments, identified by the document control number [OPP-300237], must be received on or before December 2, 1991.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Beringer, Special Review and Reregistration Division (H7508), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. 2K5, Crystal Station #1, 3rd Floor, 2800 Jefferson Davis Hwy., Arlington, VA 22202, 703-308-8018.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is proposing to revoke the food additive regulation for residues of the pesticide dichlorvos (2,2-dichlorovinyl dimethyl phosphate), also known as DDVP, in or on packaged or bagged nonperishable processed food, under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA).

II. Legal Background

The Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.), authorizes the establishment of tolerances and exemptions from tolerances for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408, and the promulgation of food additive regulations for pesticide residues in processed food under section 409 of that Act (21 U.S.C. 346(a), 348). Under the Reorganization Plan No. 3 of 1970, 4 Stat. 3086, which established EPA, the authority to set tolerances for pesticide chemicals in or on raw agricultural commodities and processed food under sections 408 and 409 of the FFDCA was transferred from the Food and Drug Administration (FDA) to EPA. FDA retains the authority to enforce the tolerance and food additive provisions under this Plan.

Without such tolerances, exemptions from tolerances, or food additive regulations (sometimes referred to as "tolerances"), a food containing pesticide residues is "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). Under section 408, tolerances or exemptions from tolerances are established for pesticide residues in raw agricultural commodities. Food additive regulations for pesticide residues in processed foods are established under section 409. Raw food tolerances, however, generally govern pesticide residues in processed foods. Section 409 only applies where the concentration of the pesticide residue in a processed food is greater than the tolerance prescribed for the raw agricultural commodity or if the processed food is treated with a pesticide. In these circumstances, unless a food additive regulation is established the processed food will be considered adulterated.

To establish a tolerance or an exemption under section 408 of the FFDCA, the Agency must make a finding that the promulgation of the rule would "protect the public health" (21 U.S.C. 346a(b)). In reaching this determination, the Agency is directed to consider, among other relevant factors: (1) the necessity for the production of an adequate, wholesome and economical food supply; (2) other ways in which the consumer may be affected by the pesticide; and (3) the usefulness of the pesticide for which a tolerance is sought. Thus, in essence, section 408 of the FFDCA gives the Agency the authority to balance risks against benefits in determining appropriate tolerance levels. The Agency is permitted to set a tolerance at zero "if the scientific data before the Administrator do not justify the establishment of a greater tolerance" (21 U.S.C. 346a(b)).

The establishment of a food additive regulation under section 409 requires a finding that use of the pesticide will be "safe" (21 U.S.C. 348(c)(3)). Relevant factors in this safety determination include: (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; and (3) appropriate safety factors to relate the animal data to the human risk evaluation. Section 409 contains the Delaney Clause, which specifically provides that, with very limited exceptions, no additive is deemed safe if it induces cancer when ingested by man or animals. Id.

Under sections 408 and 409 of the FFDCA, the proponent of a tolerance or a food additive regulation has the burden of providing data establishing the safety of the pesticide for which a tolerance (or food additive regulation) is sought (21 U.S.C. 346a(d)(1), 348(b)(2)). As noted by both the House and Senate reports:

> Before any pesticide-chemical residue may remain in or on a raw agricultural commodity, scientific data must be presented to show that the pesticide chemical is safe from the standpoint of the consumer. The burden is on the person proposing the tolerance or exemption to establish the safety of such pesticide-chemical residue.

H.R. Rep. No 1385, 83d Cong., 2d Sess. at 5 (1954); S. Rep. No. 1635, 83d Cong., 2d Sess. at 5 (1958) ("The Secretary would deny a petition to establish the safety of [a food] additive if the data before the Secretary fail to establish that the proposed use of the additive under the specified conditions of use will be safe."). Once a tolerance (or food additive regulation) has been established, the burden of justifying the continued safety of the pesticide residues authorized by the rule remains with the proponent of such rule 40 CFR 179.91 (*Environmental Defense Fund* v.

Department of Health, Education and Welfare), 428 F.29 1083, 1092 n. 27 (DC Cir. 1970)).

For a pesticide to be sold and used in the production of a food crop or an animal, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.). FIFRA requires the registration of all pesticides which are sold and distributed in the United States. The statutory standard for registration is that, among other things, the pesticide performs its intended function without causing "unreasonable adverse effects on the environment [including people]" (7 U.S.C. 136a(c)(5)). In applying this standard, EPA is required to take into account "the economic, social, and environmental costs and benefits of the use of any pesticide" (7 U.S.C. 136(bb)). Under section 6 of FIFRA, EPA may cancel the registration for a use of a pesticide or modify the terms and conditions of registration whenever it determines that the use of the pesticide no longer satisfies the statutory standard for registration (7 U.S.C. 136d(b)). Such an action can result from an administrative review, known as the Special Review process, whereby the Agency collects information on the risks and benefits associated with the uses of a pesticide to determine whether any use causes unreasonable adverse effects to human health or the environment. See 40 CFR part 154.

III. Regulatory Background

Dichlorvos (DDVP) is an insecticide registered for use under FIFRA on a number of sites including a variety of food crops, stored and processed foods, in commercial, institutional, and industrial buildings, as well as domestic use in homes. A food additive regulation of 0.5 ppm for residues of dichlorvos in or on packaged or bagged nonperishable processed food is codified in 40 CFR 185.1900. This section 409 food additive regulation covers the use of dichlorvos to control insects in processing plants, warehouses, and in various transportation facilities containing packaged and bagged processed commodities, such as cereals, cookies, crackers, flour, and sugar.

In 1980, the Agency referred dichlorvos to the Rebuttable Presumption Against Registration or RPAR process under FIFRA, now called the Special Review process. The RPAR referral was based on scientific studies which indicated that dichlorvos was mutagenic and might cause cancer, nerve damage, and birth defects in laboratory animals.

In 1982, the Agency issued a document reporting the results of its evaluation of dichlorvos (47 FR 45075). Initial concern had been based on the results of animal studies that were later found to be equivocal or to show no positive evidence of the suspected effects of exposure to dichlorvos. The Agency concluded that the existing information did not support the initiation of the RPAR process at that time. However, a determination was made to review results of carcinogenicity studies being conducted for the National Cancer Institute/National Toxicology Program when completed, and to issue a Data Call-In for four mutagenicity studies in March 1983.

During preparation of the Registration standard for dichlorvos, issued in September 1987, EPA reviewed all of the available toxicology data for this chemical including the National Cancer Institute/National Toxicology Program (NTP) carcinogenicity studies on dichlorvos (1986). The animal studies conducted by NTP show that exposure to dichlorvos is associated with a numerical increase in pancreatic acinar adenomas and a statistically significant, dose-related increase in mononuclear cell leukemia in the male (Fischer 344) rat. In addition, dichlorvos exposure to the female (B6C3F1) mouse resulted in a statistically significant, dose-related increase in squamous cell forestomach papillomas.

As a result of this review, EPA classified dichlorvos as a Group B_2 (probable human) carcinogen, and a cancer potency estimate (Q_1^*) for dichlorvos was calculated to be 2.9×10^{-1} $(mg/kg/day)^{-1}$. EPA then referred this classification to the Scientific Advisory Panel (SAP) for review. The Panel concluded that the appropriate classification for dichlorvos was as a Group C (possible human) carcinogen.

At the time the Registration Standard was issued, the cumulative lifetime dietary risk from exposure to dichlorvos was estimated at 1×10^{-4}. This risk estimate was based on residues observed in field trial data adjusted for percent of crop treated and on cooking data for small grains. The contribution to the diet from meat and milk was estimated to account for more than 50 percent of the estimated dietary risk.

On February 24, 1988, EPA initiated a Special Review (previously referred to as a Rebuttable Presumption Against Registration) for pesticide products containing dichlorvos (53 FR 5542). EPA determined that exposure to dichlorvos from the registered uses may pose an unreasonable carcinogenic risk and inadequate margins of exposure for cholinesterase inhibition and liver effects to exposed individuals. The risks of concern are for the public from consumption of foods containing residues of dichlorvos, for those involved in the application of dichlorvos, for workers reentering treated areas, for residents/occupants of treated areas, for people exposed to pets treated with dichlorvos, and for pets treated with dichlorvos.

As part of the ongoing Special Review process, a further review of the toxicological data for dichlorvos was completed in July 1989. The EPA Office of Pesticide Programs Peer Review Committee revised the classification of dichlorvos from a Group B_2 to a (quantified) Group C carcinogen for the oral route of exposure. Following the reclassification of dichlorvos, the Q_1^* was revised to 2.0×10^{-1} $(mg/kg/day)^{-1}$.

On May 25, 1989, the State of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals filed a petition which asked the Agency to revoke food additive regulations for seven potentially carcinogenic substances, including dichlorvos food additive regulations for dried figs and bagged or packaged nonperishable processed food. Petitioners argued that these food additive regulations should be revoked because the seven pesticides to which the regulations applied were animal carcinogens and thus the regulations violated the Delaney Clause of section 409 of the FFDCA.

EPA responded to the petition on April 18, 1990 (55 FR 17560). EPA agreed to revoke the food additive regulation for dichlorvos use on figs due to voluntary cancellation of this use; however, EPA denied the request to revoke the food additive regulation on packaged or bagged nonperishable processed commodities. The Agency concluded that immediate revocation would be premature because residue data required by the Registration Standard had not been submitted and that these data would be used to reevaluate the exposure estimate for bagged or packaged nonperishable processed food. EPA concluded that the new residue data were likely to result in a *de minimis* risk estimate for dichlorvos.

On May 22, 1990, the petitioners filed objections with EPA to the Petition Response. The petitioner's central objection was that EPA had incorrectly interpreted section 409 by reading a *de minimis* exception into the Delaney clause.

On February 15, 1991, EPA issued its final order reaffirming that its interpretation of the Delaney Clause is legally proper and ruled on whether specific pesticide uses fall within the *de minimis* exception. Upon reexamination of the dichlorvos residue data, the Agency concluded that carcinogenic risks resulting from use of dichlorvos on bagged or packaged nonperishable food may, in fact, exceed a *de minimis* level and announced its intentions to take steps to revoke the dichlorvos food additive regulation for packaged or bagged nonperishable processed food.

Recently, EPA imposed deadlines for submission of residue studies and required the submission of degradation studies in connection with the ongoing Special Review action under FIFRA. EPA is continuing to pursue the Special Review of dichlorvos despite the proposed revocation of the food additive regulation for bagged or packaged nonperishable processed foods because this use remains registered under FIFRA.

IV. Current Proposal

A. Timing of the Current Proposal

Normally, it is EPA's policy to propose revocation of tolerances for residues of a pesticide in or on a given commodity following cancellation or proposed cancellation of the registered use of the pesticide on the commodity. This policy attempts to coordinate action under FFDCA and FIFRA in a logical manner by ensuring that pesticides which may be legally sold, distributed, and used under FIFRA do not result in food which is adulterated under FFDCA. The Agency believes that coordinating action under the two statutes is important for providing fair notice to growers and other pesticide users on what pesticides they may use without the possibility of incurring legal sanctions.

In the case of dichlorvos use on packaged or bagged nonperishable processed foods, EPA is proposing to revoke the food additive regulation even though no cancellation under FIFRA has been initiated. This deviation from EPA's usual practice is necessitated by differences in the substantive standards for regulation under FIFRA and section 409 of the FFDCA. Although EPA attempts to coordinate its actions under FIFRA and the FFDCA, EPA's actions in this regard are constrained by both the substantive standards of the laws and statutory procedures which allow petitions on individual food additive regulations to be filed with EPA. In circumstances where resolution of a FIFRA Special Review action is imminent, EPA believes it may withold action under the FFDCA pending completion of the FIFRA action (56 FR 7773; February 25, 1991). Even a proposed FIFRA action on DDVP is not imminent, however.

EPA was petitioned by the State of California, The Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals under the statutory procedures in the FFDCA to revoke the food additive regulation for dichlorvos on packaged or bagged nonperishable processed foods. In evaluating that petition, EPA determined that revocation was appropriate because the dichlorvos food additive regulation was inconsistent with the Delaney Clause in section 409. Under EPA's interpretation, the Delaney Clause places very stringent limitations on the establishment of food additive regulations for pesticides which may pose a human cancer risk. Unless the potential cancer risk posed by the pesticide use is *de minimis*, EPA believes no food additive regulation may be established. This same standard applies to existing food additive regulations. The best information EPA has on dichlorvos residues on packaged or bagged nonperishable processed foods indicate that these residues pose a cancer risk in the range of 10^{-5}. Although EPA noted that when residue data required by the Registration Standard are submitted there may be a reduction in that risk estimate, there was no firm basis for that prediction, because the initial risk estimate was based on weak residue data. Accordingly, EPA could not conclude, or reasonably project, that the dichlorvos food additive regulation met the *de minimis* exception to section 409.

Under FIFRA, EPA regulates pesticides under a different standard than in FFDCA section 409. FIFRA contains no Delaney Clause. Moreover, FIFRA requires that EPA weigh the risks and the benefits posed by use of a pesticide. EPA's current evaluation of dichlorvos under FIFRA is that the risks raise concerns, and for that reason the pesticide has been placed in EPA's Special Review process. However, these risk concerns are not so great that EPA believes at this time cancellation or suspension of the dichlorvos registration appears clearly appropriate.

EPA realizes that proceeding with revocation of the dichlorvos food additive regulation on packaged or bagged nonperishable processed foods while the use is still registered may result in significant economic impacts to individuals who unknowingly use dichlorvos in situations which will produce illegal residues in food and those commodities are seized by the Food and Drug Administration. EPA requests comment on steps which could be taken to ameliorate this problem.

B. Revocation

EPA is proposing to revoke the dichlorvos food additive regulation for packaged or bagged nonperishable processed foods because the food additive regulation is inconsistent with section 409's Delaney Clause. The Delaney Clause bars the establishment of food additive regulations for substances which induce cancer in humans or animals. During preparation of the Registration Standard for dichlorvos, issued in September 1987, EPA reviewed the (1986) NTP carcinogenicity studies on dichlorvos. The animal studies conducted by NTP show that exposure to dichlorvos is associated with a numerical increase in pancreatic acinar adenomas and a statistically significant, dose-related increase in mononuclear cell leukemia in the male (Fischer 344) rat. In addition, dichlorvos exposure to the female (B6C3F1) mouse resulted in a statistically significant, dose-related increase in squamous cell forestomach papillomas. EPA believes that the above animal studies are appropriate for evaluation of the safety of a food additive and that they demonstrate that dichlorvos induces cancer in animals.

That conclusion does not end the analysis, however, because as indicated above, EPA recognizes an exception to the Delaney clause for pesticide uses which pose a *de minimis* risk. EPA has estimated the risk for dichlorvos on packaged or bagged nonperishable processed foods to be in the range of 10^{-5}. This risk estimate is based on the cancer potency factor derived from the mouse and rat studies and certain assumptions concerning dichlorvos exposure. To estimate the amount of dichlorvos residues present on food, the Agency assumed that the treated commodities contained dichlorvos at the food additive regulation level adjusted for percent of commodities treated. The dietary exposure estimate is based on the existing food additive regulation level, which states the maximum permissible level in the processed commodities, since EPA has inadequate residue data on packaged or bagged nonperishable food following treatment to permit an assessment of actual or typical dietary exposure. EPA has required that these data be submitted.

Residue data often show average residues to be below the level of the food additive regulation. However, in the case of dichlorvos, available data

suggest dichlorvos residues may actually exceed the level of the food additive regulation by a substantial amount. In developing the dichlorvos Registration Standard, EPA reviewed a study that measured dichlorvos residues 12 and 60 hours following aerosol treatment of several packaged commodities at approximately one-third the maximum application rate. Dichlorvos concentrations in the various commodities ranged from 1.2 to 4.0 ppm and 0.6 to 1.6 ppm, 12 and 60 hours following treatment, respectively. The food additive regulation for these commodities is 0.5 ppm. Therefore, a risk estimate assuming exposure at the food additive regulation level is not necessarily a conservative estimate of risk. When better exposure data are obtained, the risk estimated may decline, but it also may remain in the same range or even increase.

EPA has also required degradation studies to determine the rate at which dichlorvos degrades. However, even if it is assumed that dichlorvos degrades quickly, EPA cannot reasonably conclude that the risk from consumption of dichlorvos-treated nonperishable processed foods would be *de minimis* because data are inadequate to accurately estimate initial residue levels.

Under these circumstances, EPA cannot make a reasoned judgment that data which have been or will be required from the dichlorvos registrants are likely to show that dichlorvos residues on packaged or bagged nonperishable processed foods pose at most a *de minimis* risk.

C. Timing of Revocation

Because EPA is not at this time proposing the cancellation of the registration for use of dichlorvos on packaged or bagged nonperishable processed foods, revocation of the dichlorvos food additive regulation for these commodities may result in significant disruption of the food market by making large numbers of legally treated commodities subject to seizure. Nonetheless, by delaying the effective date of the revocation until food treated with dichlorvos prior to EPA's final revocation decision clears the market, EPA could reduce this disruption. EPA has limited information indicating that the majority of dichlorvos-treated nonperishable processed commodities will clear the market in 1 year, with some commodities requiring up to 2 years. However, preliminary data indicate that dichlorvos may degrade to undetectable levels in approximately 60 days following treatment of processed commodities. Based on this information, EPA proposes that this revocation become effective 120 days after the final action. EPA requests comment on whether the proposed effective date of the revocation is appropriate.

V. Public Comment Procedures

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by December 2, 1991. Comments must bear a notation indicating the document control number, [OPP-300237]. Three copies of the comments should be submitted to the address listed under "ADDRESS" above. Documents considered and relied upon by EPA in reaching its decision and all written comments filed pursuant to this document will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except public holidays.

To satisfy requirements for analysis specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128 at the address given above.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. The Agency's best judgment is that the total impact of this proposed rule would be approximately $50 million per year.

This proposed rule has been reviewed by the Office of Management and Budget (OMB) as required by E.O. 12291.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Although many food processors and warehouses will experience an increase in chemical costs as a result of using alternatives to DDVP, this cost should be approximately proportional to the space being treated. Therefore, small entities should not have a competitive disadvantage relative to larger entities.

Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 185

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests

Dated: September 26, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 185 be amended as follows:

PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.1900 [Removed]

2. By removing § 185.1900 *2,2-Dichlorovinyl dimethyl phosphate.*

[FR Doc. 91-23843 Filed 10-2-91; 8:45 am]
BILLING CODE 6560-50-F

federal register

Thursday
October 3, 1991

Part V

Environmental Protection Agency

40 CFR Part 88

Clean Fuel Fleet Credit Programs, Transportation Control Measure Exemptions, and Related Provisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

[AMS-FRL-4013-6]

Clean Fuel Fleet Credit Programs, Transportation Control Measure Exemptions, and Related Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Provisions of the Clean Air Act Amendments enacted in 1990 require certain states to revise their state implementation plans to create clean fuel fleet programs. These programs will require that some of the new vehicles purchased by certain fleet owners be clean fuel vehicles. State fleet programs must meet several statutory requirements, including one requiring a credit program and one exempting clean fuel fleet vehicles from certain transportation control measures (TCMs). These two requirements, as well as the emissions standards for clean fuel vehicles, are to be developed by the EPA. Federal agency fleets will be subject to the requirements of the state programs as well as to several requirements specific to them. This NPRM contains proposed regulations for the credit program, certain federal fleet requirements, and the TCM exemptions. Emission standards applicable to clean fuel fleet vehicles will be proposed at a later date. The intended effect of the credit program is to permit the fleet industry to collectively meet the fleet program requirements in the most cost-effective manner possible. The TCM exemptions program provides an business incentive to those fleets participating in the program.

DATES: Comments on this proposal will be accepted until November 18, 1991.

EPA will conduct a public hearing on October 17 and 18, 1991.

Additional information on the public hearing and submission of comments can be found under "Public Participation" in the Supplementary Information section of today's notice.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-91-25 at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The public hearing will be held at the EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. The public hearing will begin at 9 a.m. and will continue until such time as all testimony has been presented. The hearing will be recorded and a transcript of the hearing will be placed in the docket for this rulemaking. Those desiring a separate copy of the transcript of the proceedings should contact the court reporter on the day of the hearing.

Materials relevant to this proposed rulemaking have been placed in Public Docket No. A-91-25 by EPA. The docket may be inspected from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Wyborny, U.S. EPA (SDSB-12), Emission Control Technology Division, 2565 Plymouth Rd., Ann Arbor, MI 48105, Telephone: (313) 668-4473.

SUPPLEMENTARY INFORMATION:

I. Introduction

This NPRM proposes regulations for the fleets credit program, the exemptions for affected fleet vehicles from certain transportation control measures (TCMs), and certain requirements for affected federal fleets. The purpose of this introduction is to describe the statutorily mandated fleet program in order to provide a context from which to view the regulations being proposed today. It also describes the nature of the regulated industry—fleet owners and operators. Finally, it describes the timing of the fleet program and of various other actions which may affect the regulations being proposed today.

A. The Fleet Program

The fleet program is contained in part C, Clean Fuel Vehicles, of title II of the Clean Air Act, as amended (CAA). It is a program to introduce lower pollution emitting vehicles into centrally fueled fleets of vehicles in areas with air quality problems. Congress chose centrally fueled fleets because operators of these fleets have more control over obtaining fuel than the general public. Additionally, the central control which operators must maintain over their fleets simplifies the issues of maintenance and refueling of these special vehicles. Finally, because fleet vehicles typically travel more miles on an annual basis than do non-fleet vehicles, there is more of an opportunity to produce a positive impact on air quality, on a per vehicle basis, by regulating fleets.

In section 241, the CAA defines the "covered fleets" as fleets of 10 or more motor vehicles which are owned or operated by a single person. Further direction is provided on determining which vehicles count toward making this determination. Specifically exempted are motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicles manufacturer product evaluations or tests, law enforcement and other emergency vehicles, and nonroad vehicles (including farm and construction vehicles). The CAA further restricts the fleet regulations to those vehicles which are in a class for which clean fuel vehicle (CFV) standards apply, and which are also in centrally fueled covered fleets (or covered fleets capable of being centrally fueled). According to section 241(6) of the Act, vehicles which under normal operations are garaged at a personal residence at night are not considered capable of being centrally fueled. However, it is expected that vehicles which are garaged at a personal residence at night and are also, in fact, centrally fueled will be covered by the fleet program.

The CAA directs certain states to require that "at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area" (section 246(b)). The states which contain covered areas (defined below) are required to revise their State Implementation Plans (SIPs) to include programs which ensure that certain fleet owners will purchase some low emitting vehicles when they purchase vehicles for their fleets. Apart from needing to comply with the requirements concerning the purchase of a certain percentage of vehicles meeting the clean fuel vehicle emission standards, regulated fleet owners will retain discretion regarding other choices about vehicle purchases, such as the fuel type they use.

There are three types of clean fuel vehicles which will satisfy the purchase requirement: Low-emission vehicles (LEVs), ulra low-emission vehicles (ULEVs) and zero-emission vehicles (ZEVs). Only low-emission vehicles are required to be purchased by the statute; eligible fleet operators purchasing ULEVs and ZEVs will receive credits against the LEV purchase requirements pursuant to the credit program proposed today. There are three vehicle classes covered by the program: Light-duty vehicles and trucks (LDVs and LDTs) under 6000 lbs Gross Vehicle Weight Rating (GVWR), LDTs between 6000 lbs and 8500 lbs GVWR and heavy-duty

vehicles (HDVs) over 8500 lbs GVWR but under 26,000 lbs GVWR. HDVs with a GVWR above 26,000 pounds are not covered by the fleet program.

EPA is required to set clean fuel vehicle emission standards for LEVs, ULEVs, and ZEVs in each vehicle class, for the purpose of implementing the CAA clean fuel vehicle programs, including the fleet program. In accordance with the requirement of section 242(a) of the CAA, which requires EPA to promulgate clean fuel vehicle standards within 24 months of the enactment of the 1990 amendments, EPA plans to promulgate these emission standards as part of a rulemaking in 1992. Also in 1992, EPA will promulgate the requirements for conversions of conventional vehicles to clean fuel vehicles (section 247 of the CAA).

The CAA prescribes purchase requirements in terms of a percentage of the total number of new covered fleet vehicles of each class purchased each year by a covered fleet operator. The program's purchase requirements phase-in over three years. There are two phase-in schedules; one for heavy-duty vehicles and one for light-duty vehicles and light-duty trucks:

VEHICLE PURCHASE REQUIREMENT PHASE-IN RATE

Class	1998 (percent)	1999 (percent)	2000 (percent)
LDVs/LDTs	30	50	70
HDVs	50	50	50

The table of clean fuel vehicle phase-in requirements for fleets contained in CAA section 246(b) refers expressly to "light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles" and to "heavy-duty trucks above 8,500 lbs. GVWR." Thus, the table does not specify phase-in requirements for light-duty trucks of 6,000 lbs. or more. For the reasons set forth below, EPA believes that the omission of heavier light-duty trucks from this table was an oversight and that Congress intended that they be covered under the same phase-in schedule as for the other light-duty trucks and light-duty vehicles. Moreover, even though the table fails to mention the heavier light-duty trucks, the language of CAA section 246(b) requires SIP revisions to include minimum purchase requirements for light-duty trucks over 6,000 lbs.

All light-duty trucks, including those of 6,000 lbs. GVWR or more, were covered by the fleet program purchase requirements applicable to light-duty vehicles and light-duty trucks of less than 6,000 lbs. GVWR in both the House and Senate bills prior to conference. See section 206(b) of S. 1630 (as passed by the Senate on April 3, 1990) and section 201(b) of S. 1630 (as passed by the House of Representatives on May 23, 1990). Inasmuch as the intentional omission of a certain category of vehicles from the fleet program, previously covered by both bills, would have been a serious matter, it seems likely that the change would have been discussed somewhere in the legislative history. EPA has found nothing in the legislative history indicating that Congress intended to depart from the approach adopted by both the House and Senate prior to Conference.

Furthermore, notwithstanding the fact that the table of fleet purchase requirements does not mention light-duty trucks over 6,000 lbs., such vehicles are nevertheless subject to fleet purchase requirements. This is because such vehicles are expressly covered by clean-fuel vehicle standards set forth in CAA section 243 (c) and (d) and are therefore considered clean-fuel vehicles subject to the Clean Fuel Vehicles program established by part C of title II. As a consequence, those vehicles are subject to the fleet purchase requirements of CAA section 246(b), which specifies that the required SIP revisions "shall contain provisions requiring that at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles," and "For the applicable model years (MY) specified in the following table and thereafter, the specified percentage shall be as provided in the table for the vehicle types set forth in the table."

Thus, while the table sets out percentages for certain vehicles in certain model years, the required SIP revisions are to set out percentages for all clean-fuel vehicles for model year 1998 and all model years thereafter. EPA believes that the most appropriate action, in light of the apparent Congressional oversight in not listing the heavier light-duty trucks in the table, is to treat them as they were treated under both the House and Senate bills prior to Conference, i.e., subject them to the same purchase requirements as other light-duty trucks and light-duty vehicles.

The purchase requirements of this program can be met by purchasing vehicles meeting the LEV, ULEV, or ZEV standards, as stated above, or through the redemption of credits. These credits can be generated by the fleet operators themselves or obtained from other entities as discussed below.

The purpose of establishing a credit program as part of the general fleet program is to provide purchasing flexibility for the regulated fleet operators. The general concept is that some fleet operators may, at times, find it attractive to buy more clean fuel vehicles or lower emitting vehicles than required, if in doing so they can get credit against future purchase requirements, or can sell the credits to someone else who prefers not to make the required clean fuel vehicle purchases. If properly implemented, no net loss in air quality benefit occurs compared to a program based strictly on compliance requirements. This concept has been successfully implemented in other programs, such as that dealing with the trading and banking of heavy-duty engine (HDE) oxides of nitrogen (NOx) and particulate matter emissions (55 FR 30584, dated July 26, 1990).

According to section 246(a) of the CAA, the "covered areas" regulated by the program are those areas with 1980 populations of 250,000 or more that are serious, severe or extreme ozone nonattainment areas (based on 1987–1989 data) or carbon monoxide nonattainment areas with a design value above 16 parts per million (based on 1988–1989 data). Areas reclassified in the future as serious, severe or extreme ozone nonattainment areas are also affected. There are currently 21 such areas in 19 states (see Table 1). The only affected carbon monoxide nonattainment area which would not be classified as an ozone nonattainment area based on 1987–1989 data is the Denver-Boulder, Colorado area.

TABLE 1.—CLEAN FUEL FLEET PROGRAM—STATES AND MSAS/CMSAS

MSA/CMSA	States
1. Atlanta	Georgia.
2. Bakersfield	California.
3. Baltimore	Maryland.
4. Baton Rouge	Louisiana.
5. Beaumont-Port Arthur	Texas.
6. Boston-Lawrence-Salem	Massachusetts, New Hampshire.
7. Chicago-Gary-Lake County	Illinois, Indiana, Wisconsin.
8. Denver-Boulder	Colorado.
9. El Paso	Texas.
10. Fresno	California.
11. Greater Connecticut	Connecticut.
12. Houston-Galveston-Brazoria.	Texas.
13. Los Angeles-Anaheim-Riverside.	California.
14. Milwaukee-Racine	Wisconsin.
15. New York-Northern New Jersey-Long Island.	Connecticut, New Jersey, New York.

TABLE 1.—CLEAN FUEL FLEET PROGRAM—STATES AND MSAs/CMSAs—Continued

MSA/CMSA	States
16. Philadelphia-Wilmington-Trenton.	Delaware, Maryland, New Jersey, Pennsylvania.
17. Providence-Pawtucket-Fall River.	Massachusetts, Rhode Island.
18. Sacramento	California.
19. San Diego	California.
20. Springfield	Massachusetts.
21. Washington, DC	Maryland, Virginia, Washington, DC.

Many of these 21 areas include parts of more than one state. EPA expects that the states which must design a program for a multi-state nonattainment area will work together to create one program which covers the area.

There are a large number of definitions and implementational issues to be resolved in establishing the overall fleet program, many of which are left to the states by the CAA. In order to foster consistency among programs, and in response to requests from representatives of the states and affected industry, EPA plans to issue a document providing guidance on these issues. This will be done at a later date. EPA requests comment on the degree to which it should address these issues by rulemaking rather than by SIP guidance. Comment is particularly solicited on the effect that delaying final decisions on these issues until SIP revision approval (see the discussion on timing below) would have on the ability of fleet owners, vehicle manufacturers, fuel providers, and others to adequately prepare for the program implementation.

B. The Fleet World

The regulated "industry" (vehicle fleet owners and operators) is unlike most other regulated industries because the only common thread between members is the fact that they own and operate fleets of vehicles. They do not necessarily make the same product, perform the same services, or even own or operate the same type of vehicles. The industry members range in size, both in terms of revenue and vehicle fleet; there is not necessarily a correlation between the size of a company and the size of its fleet. EPA solicits any information on the structure and operating/use characteristics of fleets which would assist in refining the agency's analysis of regulated fleets. This analysis, entitled "Estimated Number of Fleet Vehicles Affected by the Clean Fuel Fleet Program," is available in Docket No. A–91–25. A summary is presented below.

EPA estimates that approximately four percent of the vehicles registered nationwide are vehicles in fleets of ten or more. These include business, for-hire, utility, and other privately-owned fleet vehicles. Also included are vehicles owned or operated by any state, local, or federal government agency. Emergency vehicles and vehicles held for rent or lease to the general public are not included. Of these vehicles in fleets of ten or more, approximately one-half are fueled at a central location.

Focusing on vehicles affected by the fleet program, there currently exists an estimated 1,150,000 centrally fueled vehicles in fleets of ten or more operating within the 21 nonattainment areas covered under this program. Approximately 50 percent are LDVs, 30 percent are LDTs, and 20 percent are HDVs. Approximately seventy-two percent of these vehicles are private business fleet vehicles, twenty percent are state and local government fleet vehicles, and eight percent are vehicles operated by the federal government.

Using estimated growth rates, replacement rates typical of fleet vehicles, and the phase-in rates described above, the numbers of fleet LDVs and LDTs required to be CFVs are estimated below. For privately-owned fleet vehicles (business, utility, etc.), the number of clean fuel LDVs and LDTs anticipated to be operating in 1998 and by the year 2000 are 60,000 and 310,000 respectively. By the year 2003, the general vehicle fleet will have essentially turned over, with a total of 570,000 private LDVs and LDTs expected to be CFVs. By the year 2010, this number will have increased to be 700,000. With regard to state and local government vehicles, by the years 1998, 2000, 2003, and 2010, approximately 20,000, 110,000, 200,000 and 250,000 vehicles respectively will be operating on clean fuels. For federal government LDV's and LDTs, including those operated by the Postal Service and the Department of Defense, the estimated number of clean fuel vehicles operating by the years 1998, 2000, and 2003 are 5,000, 24,000, and 59,000 respectively. By the year 2010, the number of federal clean-fueled fleet vehicles is expected to rise to 100,000.

For HDVs, the anticipated number of fleet CFV's is not expected to rise as sharply as for light-duty. For privately owned fleets, the number of clean fuel HDVs expected in use in 1998 and by the year 2000 are 19,000 and 60,000 respectively. By the years 2003 and 2010, EPA estimates that 98,000 and 103,000 private heavy-duty fleet vehicles will be CFVs. For state and local government, the total number of clean fuel HDVs expected to be operating in each of the years listed above are 4,000, 12,000, 20,000, and 21,000 respectively. The number of federal clean fueled HDVs operating by 1998 and 2000 is expected to be 700 and 2,000 respectively. By 2003 and 2010, the total number of heavy-duty federal fleet vehicles is expected to increase to 4,000 and to remain at that level.

EPA has estimated the number of new centrally fueled clean-fueled vehicles in fleets of ten or more registering each year in the 21 covered areas. For 1998, 2000, 2003, and 2010, the expected combined number of new LDV/LDT registrations are 85,000, 210,000, 230,000, and 270,000 respectively. The new HDV registrations for the same years are estimated at 24,000, 25,000, 25,000, and 26,000.

The data suggests that approximately 110,000 new vehicles will be clean fueled fleet vehicles in 1998. This figure will have grown to 515,000 by the year 2000, and to 1,200,000 by the year 2010. This analysis did not factor in the effects of the credit program described in today's proposal. Because the credit program is voluntary, it is difficult to predict the degree to which it will affect the analysis. The vehicle estimates discussed above are summarized in Table 2.

TABLE 2.—FLEET VEHICLE POPULATION

Year	Phase-in rate (percent)	New vehicles requiring clean fuels				Estimated clean fuel fleet size			
		Private	State/local government	Federal government	Total	Private	State/local government	Federal government	Total
Light-Duty Vehicles									
1998	30	42,000	15,000	2,000	59,000	42,000	15,000	2,000	59,000
2000	50	102,000	36,000	5,000	143,000	216,000	76,000	10,000	302,000

TABLE 2.—FLEET VEHICLE POPULATION—Continued

Year	Phase-in rate (percent)	New vehicles requiring clean fuels				Estimated clean fuel fleet size			
		Private	State/local government	Federal government	Total	Private	State/local government	Federal government	Total
2003	70	107,000	38,000	5,000	150,000	349,000	123,000	22,000	494,000
2010	70	120,000	42,000	5,000	167,000	390,000	137,000	26,000	553,000
Light-Duty Trucks									
1998	30	18,000	6,000	3,000	27,000	18,000	6,000	3,000	27,000
2000	50	45,000	16,000	7,000	68,000	95,000	33,000	14,000	142,000
2003	70	51,000	18,000	8,000	77,000	225,000	79,000	37,000	341,000
2010	70	65,000	23,000	10,000	98,000	309,000	108,000	78,000	495,000
Heavy-Duty Vehicles									
1998	50	19,000	4,000	700	23,700	19,000	4,000	700	23,700
2000	50	20,000	4,000	700	24,700	59,000	12,000	1,900	72,900
2003	50	19,000	4,000	700	23,700	98,000	20,000	4,000	122,000
2010	50	21,000	4,000	700	25,700	103,000	21,000	4,000	128,000

C. Timing

The fleet program will require the combined effort of many parties to be a success. This section briefly discusses the timing and coordination of these efforts.

The final rule promulgating the credit program and TCM exemptions proposed today will be issued in accordance with the statutory deadline for those regulations, i.e., by November, 1991. That rule will also include regulations concerning the federal fleets.

Also at that time, the final rule regarding the credits portion of the California Pilot Test Program is expected. This program, which was mandated with the fleet program in part C of title II of the CAA, will require the sale of clean fuel vehicles in California. The pilot program, along with similar provisions being planned by the State of California, will begin at least two years before the fleet program, and so will help to ensure the availability of CFVs for the fleet program on a national basis.

The timing for issuance of EPA's specific guidance regarding SIP revisions to implement the fleet program has not yet been established. EPA plans to provide this guidance in adequate time to be of use to the states in revising their SIPs before the 42 month CAA deadline, or in opting-out of the program pursuant to section 182(c)(4)(B).

In 1992, rulemakings setting standards for light- and heavy-duty LEVs, ULEVs, and ZEVs, and for vehicle conversion (CAA section 247) will be finalized. By November 15, 1992, covered states wishing to exercise their option to not participate in the fleet program per the provisions of CAA section 182(c)(4), must submit a SIP revision in accordance with those provisions. EPA will then have six months in which to approve or disapprove such SIP revision.

Within 42 months of the date of the Clean Air Act Amendments of 1990 (that is, by May 15, 1994), SIP revisions are due from each of the states subject to the fleet program. In addition, CAA section 246(a)(3) expressly provides that all states containing all or part of an area with a 1980 population of 250,000 or more, that is reclassified at any time in the future as a Serious, Severe or Extreme ozone nonattainment area, are to prepare revised SIPs within one year of such reclassification.

In addition to the clean fuel fleet program required by the Clean Air Act, there are a number of other programs being implemented or considered at national, state, or local levels, which involve the introduction of clean fuel vehicles in fleets. There is expected to be some overlap between the requirements for vehicles in these programs and those for vehicles in the CAA fleet program. Of particular interest is the alternative fuel fleets program being proposed as part of the National Energy Strategy. This program, as proposed, would generally include those fleets covered by the CAA fleet program. EPA has been coordinating the CAA fleet program with the Department of Energy and will continue to do so in order to minimize the impact on regulated industries while ensuring that the goals of the CAA fleet program are met.

II. Description of the Regulations

This section describes the regulations being proposed today: the credit program, TCM exemptions, and provisions for federal fleets. These programs are dependent upon the existence of certain vehicle emission standards, which are not yet promulgated, and upon state fleet programs which are expected to be established via SIP revisions in 1994. Certain assumptions are being made herein about what those standards and programs will entail. If EPA's assumptions prove to be incorrect in a way which affects the regulations being proposed, the regulations will be amended.

A. Credit Program

This section discusses the issues involved in establishing the credit programs which are to be administered by each state participating in the fleet program. Although many of the issues will be resolved by this rulemaking, EPA considers the resolution of some issues connected with the credit program to be best left to the states and indicates so, along with the basis for these decisions, in the discussion below.

Following a summary of the CAA provisions related to the credit program, an analysis of general credit issues is provided. This is followed by a discussion of issues related to the credit weightings to be applied to various types of vehicles eligible for credits.

1. Statutory Provisions

Section 246(f) of the CAA requires that EPA promulgate regulations for the fleets credit program and directs the covered states to administer this program. It also requires that the credit program incorporate several specific elements, which are described below.

First, regarding the issuance of credits, fleet operators are to be granted credits for: (1) The purchase of more clean fuel vehicles than required, (2) the purchase of clean fuel vehicles which meet more stringent standards established by the EPA (ULEVs and ZEVs), and (3) the purchase of vehicles

in categories which are not covered in the fleet program (exempted vehicles), but which meet the ULEV or ZEV standards. The CAA also calls for the required SIP revisions to provide credits to fleet operators that purchase vehicles certified to meet clean fuel vehicle standards during any period after approval of the SIP and prior to the effective date of the fleet program.

Second, regarding the use of credits, the credits may be used to demonstrate compliance with the fleet program requirements, or may be traded or sold for use by any other person to demonstrate compliance within the same nonattainment area. Credits obtained at any time may be held or banked for use at any later time without depreciation. The CAA specifies one limitation on trading: Credits issued with respect to the purchase of vehicles of up to 8500 lbs GVWR may not be used to demonstrate compliance with fleet program requirements applicable to vehicles of more than 8500 lbs GVWR, or vice versa. Thus, credits associated with the purchase of LDVs and LDTs may be exchanged, but these credits may not be exchanged with those associated with HDV purchases or compliance requirements.

Finally, regarding the weighting of credits, credits are to be adjusted with appropriate weighting to reflect the level of emission reduction achieved by the vehicle.

2. General Credit Program Issues

In developing the credit program to be implemented by the states, EPA has identified a number of issues which need to be addressed. The purpose of the discussion below is to describe these and to delineate EPA's proposed approach. In some cases EPA proposes a specific approach; in others, decisions are proposed to be deferred to the states.

The purpose of issuing credits is to assist fleet operators in complying with the requirements of the fleet program without sacrificing the program's overall air quality benefit in each nonattainment area. EPA seeks ways of furthering this goal in the credit program design and invites suggestions on how to do so. Commenters should keep in mind that these suggestions should not compromise the air quality benefits of the fleet program.

a. *Credit eligibility.* Section 246(f)(1) of the CAA requires that SIP revisions provide for the issuance of credits to a "fleet operator". It does not require that credits be issued only to "covered fleet operators", that is, those who are required by the CAA to buy clean fuel vehicles. There may be some advantage in allowing the issuance of credits to operators of fleets who buy vehicles meeting the requirements of the credit program, regardless of fleet size or central fueling capability. Such credit holders could then sell their credits to covered fleet operators who need them to demonstrate compliance. One potential advantage would be the wider distribution, and therefore possibly more diverse introduction, of clean fueled vehicles.

Because of these advantages, EPA is proposing to allow states to determine the coverage of fleet credits. There are, of course, some problems with expanding the coverage because such an approach would be more complex to administer. Also, vehicles in small fleets or garaged in areas in which clean fuels are not readily available might be less likely to receive the maintenance attention that large central fleets would receive, and would be more likely to be misfueled. Consequently, the full environmental benefit might not be realized compared to other fleets, and the CAA requirement that all fleet CFVs use clean fuels might not be satisfied. EPA proposes that each state decide the extent of credit eligibility in each affected nonattainment area. At a minimum, however, all fleet operators subject to the compliance requirements of the fleet program must be eligible for credits. EPA requests comment on this proposal, especially on whether or not the states should be required to extend credit eligibility to fleets which are not subject to the compliance requirements, and, if so, to what extent.

Another credit eligibility issue arises in implementing section 246(f)(1)(C) of the CAA, which provides for credits to purchasers of vehicles in categories specifically exempted from the fleet program requirements, but which meet the ULEV or ZEV standards. This applies to vehicles excluded by the CAA from the definition of a covered fleet, such as motor vehicles held for lease or rental to the general public, and law enforcement and other emergency vehicles (CAA section 241(5)). It also applies to other excluded vehicles: Those which are not "centrally fueled (or capable of being centrally fueled)," including vehicles which under normal operations are "garaged at a personal residence at night" (241(6)).

Considering the previously discussed complexities involved in requiring the states to issue credits to fleet operators who are not required to participate in the fleet program, EPA proposes that mandatory credit eligibility for the purchase of ULEVs or ZEVs which are in one of the above excluded categories be applied only to fleet operators who are also required to buy clean fuel vehicles under the provisions of the fleet program. For example, a fleet operator who purchases 20 emergency vehicles (none of which are required to be clean fueled) and 20 general purpose vehicles (subject to the fleet program requirements), must be allowed by the states to obtain credits for the purchase of any emergency vehicles which are ULEVs or ZEVs, provided that any other requirements for credit issuance are also met. A fleet operator whose fleet consists entirely of emergency vehicles is not required to buy clean fuel vehicles and therefore is eligible for credits only if the state has set up a credit program which offers credits to such voluntary participants.

EPA is also proposing that credits be issued for purchases of vehicles in excluded categories that meet LEV standards. Section 246(f)(1)(A) provides the statutory basis for this aspect of the proposal regarding credits for the purchase of vehicles in excluded categories because it refers to the issuance of credits for the purchase of more clean fuel vehicles than required. Inasmuch as no purchases of LEVs in excluded categories are required, the purchase of any LEVs in those categories constitutes the purchase of more LEVs than required and should qualify for the appropriate credits based on the weight class of the vehicles and the standards to which they are certified. As for ULEV and ZEV purchases in excluded categories, the purchase of LEVs in these categories by fleet operators who are not required to participate in the fleet program would generate credits only if the state's program allows for it.

b. *Credit trading to stationary sources.* EPA is interested in the possibility of establishing source trading programs allowing emission credits generated in vehicle programs to be traded against emissions from stationary sources. EPA requests comment on this idea, as it relates to the fleet program. Specifically, we would appreciate any comments highlighting the desirability, benefits or problems with such a program, legal arguments for or against the program, technical issues which should be considered in defining the program, cost/effectiveness tradeoffs, and relevant data regarding any of these concerns. Specifically with respect to legal issues, EPA solicits comment on (1) whether such credits could be used to assist stationary sources in complying with the requirements prescribed in title I of the Act, and (2) whether section 246(f)(2), which provides that fleet program

credits are to be used to demonstrate compliance with that program, prohibits the trading of fleet credits to stationary sources.

c. *Early purchases.* In accordance with CAA section 246(f)(5), today's proposal includes a requirement that the covered states provide credits to fleet operators who purchase clean fuel vehicles during any period following approval of the SIP revision and prior to the effective date of the fleet program. These credits would also be subject to the no depreciation provision of the CAA. EPA considers that this requirement would be met if: (1) The SIP provides for implementation of credit recordkeeping and issuance procedures not later than the effective date of the fleet program, and (2) the SIP also provides for the issuance of credits to eligible fleet operators who provide proof of vehicle purchases made after the SIP revision has been approved and who also meet the other requirements for issuance of credits.

EPA believes that this CAA provision for credit issuance to purchasers of clean fuel vehicles in the pre-implementation time period does not obligate the states to fulfill the fuel availability provisions of the CAA in the same time frame. However, the CAA requirements for use of clean fuels in clean fuel fleet vehicles should apply to these early purchase vehicles as well. Otherwise, there may be little or no air quality benefit produced by the early CFV purchase. Consequently, fleet owners desiring to make early CFV purchases in this time period should first ensure that the appropriate clean fuel will be available, as violation of the clean fuel use requirement would be expected to result in the same penalties under the states' programs during this pre-implementation time period as would be incurred in the post-implementation period. One penalty particularly appropriate in this context would be the forfeiture of credits.

d. *Cross-area trading.* In providing that credit trading may occur between fleet operators located in the same nonattainment area, the CAA implicitly precludes the trading of credits between fleet operators who are not located in the same nonattainment area. The major potential advantage of cross-area trading would be the creation of a wider market for such transactions and thus a potential cost savings. The major potential disadvantage would be the loss in benefit to the environment in areas experiencing a net inflow, and subsequent redemption, of credits. By the same reasoning, EPA believes that this provision also prohibits fleet owners who own a covered fleet, portions of which are located in different nonattainment areas, from using credits generated in one area to show compliance in another.

e. *Other requirements.* It is reasonable to expect that any SIP requirements placed on clean fuel vehicles which are purchased to comply with the fleet program requirements would also apply to vehicles which generate credits. For example, the CAA requires that clean fuel vehicles purchased to comply with the fleet program requirements use clean alternative fuel when operating in the covered area. A net loss to the environment would occur if a credit-generating vehicle, such as a clean fuel vehicle bought a year earlier than required, did not also use clean alternative fuel. Although it is too early to anticipate all of the requirements likely to be included in all of the SIP submittals, EPA is unaware of any possible requirements which would apply to vehicles purchased to demonstrate compliance and not to vehicles purchased for credits. Therefore, EPA is proposing that any such requirements apply equally to both types of vehicles and vehicle purchases.

It should be noted that this requirement would include vehicles purchased for credit by fleet owners and operators who are not subject to the compliance requirements of a state fleet program, if allowed to do so in the program. As mentioned previously, there is some concern about the administrative and enforcement burden placed upon the states in allowing these small or non-centrally fueled fleets to voluntarily join the program for credit purposes, especially with regard to the "must use clean alternative fuel" requirement. One way of reducing this burden is to restrict credit issuance for these fleets to purchases of dedicated-fuel CFVs only (or of dual-fueled CFVs which meet the same standards on both fuel types), and waive any requirements on them for fuel use validation. To prevent the use of conventional gasoline in vehicles that only meets the CFV standards when using reformulated gasoline, such vehicles would not be considered dedicated-fuel CFVs unless they were operated in areas in which essentially all gasoline sold is required to be reformulated. Note that in requiring CFVs purchased for credit by small and non-centrally fueled fleets to meet other applicable requirements, EPA does not intend that these fleets be made subject to the annual CFV purchase requirements laid on fleets which are required to comply. Comment is requested on these issues.

f. *Administrative details.* EPA proposes to leave the form of administration of the credit program (such as recordkeeping) to the states, rather than mandate it by rule. It is likely that administration of the credit program will occur in the same context as that of the general fleets compliance program and, therefore, the use of federally-mandated procedures could take away state flexibility unnecessarily. However, it is important that, in nonattainment areas which include parts of more than one state, the affected states not adopt systems which hamper the free trading of credits across state lines. To this end, EPA encourages such states to coordinate the development and implementation of their programs.

g. *Credit value.* Because the CAA specifies fleet purchase requirements in terms of a percentage of new vehicle purchases rather than in an actual number of vehicles, it is anticipated that the states will adopt some type of roundoff procedure in assessing compliance for cases in which the required percentage of a fleet operator's purchases amounts to something other than a whole number, that is, where a fraction of a vehicle is involved. As Congress clearly intended that credits retain their full value up to and including the point of redemption (CAA section 246(f)(2)(A)), it follows that these roundoff procedures should not treat credit redemption differently than actual vehicle purchases in demonstrating compliance.

For example, if a fleet operator were required to purchase 5.27 clean fuel vehicles according to the percentage requirements, and if the applicable state program allowed that the purchase of five clean fuel vehicles complied with the requirement in this case, it must also allow that the credit equivalent of five such vehicles would suffice to demonstrate compliance. The program could not insist on receiving the credit equivalent of 5.27 vehicles. Similarly, a state procedure which rounds a calculated purchase requirement of 5.75 vehicles to six would also need to require the credit equivalent of six vehicles for the same compliance requirement. Comment is requested on whether or not EPA should specify a roundoff procedure, such as rounding the calculated number of required vehicles to the nearest integer value, in this rulemaking.

EPA believes that credit tracking to the hundredth's place provides adequate precision without undue complexity. Therefore, it is proposed that all credit values be specified to this decimal place

in the records and transactions of all state programs (for example: 4.56, not 4.6 or 4.563).

3. Credit Calculation and Weighting

a. *Method of determination.* Section 246(f)(2)(C) of the CAA requires that credits be adjusted with appropriate weighting to reflect the level of emission reduction achieved by the vehicle. The Act also closely couples the credit program with standards to be promulgated subsequently by the EPA for cleaner vehicles, specifically ULEVs and ZEVs. Standards-based weighting factors also depend, however, on the standards for conventional vehicles and LEVs because the amount of credit assigned to a ULEV or ZEV purchase depends on how much further these vehicles go (beyond the LEV) in reducing emissions. This is because the redemption of a credit is meant to allow the purchase of a conventional vehicle that, under the requirements of the fleet program, would have otherwise been a LEV. It follows, therefore, that the credit earned in purchasing an extra-clean vehicle, namely a ULEV or ZEV, be based on its extra emission reduction benefit, compared to the emission reduction achieved by a LEV from conventional vehicle levels.

One difficulty presented by using emission standards to determine weighting factors is the present lack of final emission standards for LEVs, ULEVs, ZEVs and conventional vehicles. Conventional vehicle emission standards expected to be in place when the fleet program takes effect are the Tier I standards required by the CAA. This would change in the future should EPA promulgate more stringent Tier II emission standards. Similarly, conventional standards for HDEs, because they are being revised pursuant to new CAA requirements, are also subject to change before the fleet program begins. EPA plans to set LEV, ULEV, and ZEV standards in a separate EPA rulemaking, pursuant to sections 242, 243, 245, 246, and 249 of the CAA. These standards will be promulgated within two years of CAA enactment, in accordance with the statutory deadline of section 242(a). This is in contrast to the one year schedule dictated for the present rulemaking.

However, the Act specifies the light-duty LEV standards and requires that the light-duty ULEV and ZEV standards be based on those promulgated by the State of California, so that values can be reasonably predicted for credit program purposes. With respect to HDVs, section 245 of the Act specifies a combined non-methane hydrocarbon (NMHC) and NO_x standard that EPA may adjust within certain limits, and section 246(f)(4) indicates that heavy-duty ULEV and ZEV standards should be comparable in stringency to the light-duty ULVE and ZEV standards.

On the basis of these provisions of the Act and California's standards, EPA is proposing to use the emission standards listed in table 3 for the purpose of credit calculations, with the understanding that any changes in EPA's expectation of the standards' values prior to issuance of this final rule will be factored into the final rule calculations. Also, if any such changes are made subsequent to issuance of this final rule, by will be likewise accounted for via a revised rulemaking. To simplify the credit calculations, only the 50,000 mile (new vehicle) standards are used, not the 100,000/120,000 mile standards or some combination of the two.

TABLE 3.—EMISSION STANDARDS USED FOR DETERMINING CREDIT WEIGHTINGS—LIGHT-DUTY

	LDV, LDT <6000 GVWR <3750 LVW	LDT <6000 GVWR >3750 LVW <5750 LVW	LDT >6000 GVWR <3750 TW	LDT >6000 GVWR >3750 TW <5750 TW	LDT >6000 GVWR >5750 TW
Conventional:					
NMHC	0.25	0.32	0.25	0.32	0.39
CO	3.4	4.4	3.4	4.4	5
NO_x	.4	.7	.4	.7	1.1
LEV:					
NMOG	.075	.1	.125	.16	.195
CO	3.4	4.4	3.4	4.4	5
NO_x	.2	.4	.4	.7	1.1
ULEV:					
NMOG	.04	.05	.075	.1	.117
CO	1.7	2.2	1.7	2.2	2.5
NO_x	.2	.4	.2	.4	.6
ZEV:					
NMOG	0	0	0	0	0
CO	0	0	0	0	0
NO_x	0	0	0	0	0

HEAVY-DUTY

	HDE		
	LHD 8,501–19,500 GVWR	MHD 19,501–26,000 GVWR	HHD (Single Unit) >26,000 GVWR
Conventional:			
NMHC + NO_x	5.3	5.3	5.3
CO	15.5	15.5	15.5
LEV:			
NMHC + NO_x	3.15	3.15	3.15
CO	14.4	14.4	14.4
ULEV:			
NMHC + NO_x	2.5	2.5	2.5
CO	7.2	7.2	7.2
ZEV:			
NMHC + NO_x	0	0	0
CO	0	0	0

HEAVY-DUTY—Continued

Standards affect the weighting factors at two levels. First, the LEV, ULEV and ZEV standards will vary relative to each other within a class, and this variance must be reflected in the credit weightings. Each of these standards may also vary across vehicle subclasses, and this variation must also be reflected in the credit weighting to the degree that cross-subclass trading is allowed. In fact, the expected standards shown in table 3 exhibit both types of variances.

Actual determination of credits requires two different approaches. In the first case, the equation used to calculate credits for early/extra purchases of LEVs, ULEVs, or ZEVs is:

Equation (1)

$$credit = [S_{CV} - S_{LEV,\ ULEV\ or\ ZEV}]/[S_{CV} - S_{LEV}]$$

In the second case, for ULEV or ZEV purchases of vehicles which are also being used to demonstrate compliance with the LEV purchase requirements, the equation is:

Equation (2)

$$credit = [S_{LEV} - S_{YLEV\ or\ ZEV}]/[S_{CV} - S_{LEV}]$$

where:

$credit$ = unnormalized credit
S_{LEV} = value of LEV standard
$S_{ULEV\ or\ ZEV}$ = value of ULEV or ZEV standard
S_{CV} = value of conventional vehicle standard

In each case the numerator (top) of the equation represents the extra emission reduction and the denominator (bottom) represents the required emission reduction. The quotient of the two is the unnormalized credit.

Because the fleet program measures compliance based either on vehicles purchased or credits redeemed, these emission reductions must be expressed in terms of vehicles or vehicle equivalents, with consideration to classes/subclasses of LDVs, LDTs, and HDVs over which the trading of credits is allowed. This adjustment and normalization process and an evaluation of which pollutants specified in the standards are factored into the credit weightings are discussed in detail later in this section.

One concern arises from the potential for vehicles which can use more than one clean fuel, such as hybrid electric vehicles. Assuming these vehicles meet ULEV or LEV standards when running on their higher emitting power source, they do not deserve credit based on their lower emitting source unless they are essentially operated only on this source while in the covered nonattainment area. On the other hand, issuing credits based only on their meeting the higher emissions standards fails to recognize their potential for lower emissions. Suggestions on how to deal with this issue, such as basing credits on a hybrid vehicle's operational range while using its lower emitting power source, are requested.

b. *LDV/LDT credit program Pollutant applicability.* As the fleet program is primarily an ozone reduction program, the pollutants of special concern in most affected nonattainment areas are the primary ozone precursors: The nonmethane organic gases (NMOG). Although other pollutants are controlled by the LEV, ULEV, and ZEV standards, credit weightings based on the NMOG reductions in the standards would be most consistent with the air quality goals of the fleet program. EPA recognizes, however, that in some areas the control of oxides of nitrogen, which are also ingredients in ozone formation, is also very important.

EPA proposes, therefore, that weighting factors for LDV and LDT credits be based on the NMOG reductions in the standards, but that an alternative set of weighting factors, based on the simple sum of the NMOG reductions and the NO_x reductions, be made available for use at a state's option, subject to EPA approval. States planning to exercise this option would need to indicate that decision in their SIP revisions for each nonattainment area in which they propose to use the alternative factors. Both sets of factors are included in the proposed regulations contained in this notice.

The CAA also requires that certain carbon monoxide (CO) nonattainment areas be included in the fleet program. Only one such area does not also qualify for inclusion in the program because of ozone nonattainment: The Denver-Boulder, Colorado area. It is reasonable to expect that a credit program (and indeed a general fleet program) for this area would address the CO problem. Unfortunately, the expected LEV standards listed in table 3 do not provide CO emission reductions from conventional vehicle levels. Although the ULEV and ZEV standards do provide CO reductions, credit weightings based on incremental CO reduction over that provided by LEVs make no sense mathematically because the LEV standard requires no CO reduction.

EPA could generate another credit weighting system for the Denver-Boulder area that would encourage the purchase of CO-reducing ULEVs and ZEVs. Such a program would provide a bonus for ULEVs and ZEVs beyond that which would occur based solely on the difference in the hydrocarbon emission standards. It is not clear, however, that the credit program provides much opportunity to create a fleet program oriented to CO reduction within the restrictions of the CAA. At this time, therefore, EPA requests comment on the desirability of creating a separate credit weighting system for CO and encourages suggestions on how this would best be accomplished.

Credit values. As contemplated by the CAA, EPA proposes to require the states to allow credit trading between all subclasses of LDVs and LDTs. This would make the credit program more flexible and useful to the fleet operators and would also simplify recordkeeping. Credits generated in the purchase of LDVs and LDTs would need to be designated as such in order to ensure that they are not used to demonstrate compliance with HDV fleet program requirements. However, no LDV or LDT subclass designations would be required.

Credit tables. Because credits can be generated by early/extra LEV, ULEV, or ZEV purchases or by ULEV/ZEV purchases for compliance vehicles, and because EPA is proposing that credit exchanges be permitted between LDVs and all subclasses of LDTs, a detailed discussion of how credit determinations would be made is provided below. These determinations rely on equations (1) and (2) above and translate into the credit generation and credit need tables. These are tables C–1.1 to C–1.3 (for NMOG only) and C–2.1 to C–2.3 (for NMOG+NO_x) in the regulations contained in this notice.

Credit calculations could be made using equations (1) or (2) above, depending on which situation applies. These equations give intermediate results which would be difficult to adjust for cross class/subclass trades, because the standards values (and resulting credit weightings) differ in each of the vehicle class/subclass-standard situations involved.

To facilitate cross class/subclass credit exchanges and to simplify the credit weighting system, EPA is proposing that all values be normalized to the reduction required by the LDVs. Therefore, the term "vehicle-equivalent" refers to the reduction calculated in equation (1) for an LDV certified to the LEV standards.

In the case of early/extra LEV, ULEV or ZEV purchases discussed above, the normalized equation is:

Equation (3)

$$ncredit = [S^{x}_{cv} - S^{x}_{LEV,\ ULEV\ or\ ZEV}]/[S^{LDV}_{CV} - S^{LDV}_{LEV}]$$

where:

$ncredit$ = normalized credit (LDV equivalent)
$S_{LEV,\ ULEV\ or\ ZEV}$ = value of LEV, ULEV or ZEV standard
S_{CV} = value of conventional vehicle standard
x = the vehicle class/subclass of interest

For credit issuance involving ULEV or ZEV purchases which are also being used to demonstrate compliance, the normalized equation is:

Equation (4)

$$ncredit = [S^{X}_{LEV} - S^{X}_{ULEV\ or\ ZEV}]/[S^{LDV}_{CV} - S^{LDV}_{LEV}]$$

By using these four equations and the NMOG and NO_x emission standards in table 3, EPA has tabulated vehicle equivalent credit values (normalized to LDV values) which can be used to determine the number of credits to be issued for LDV/LDT purchases or that

are needed to show compliance with the program. EPA believes that this common-unit approach will also enhance state enforcement efforts.

Under this proposal, states retain the option of deciding how to handle fleet owners and operators who buy vehicles in more than one subclass, and who also buy more clean fuel vehicles than required for compliance. The states could: (1) Allow the fleet operators to designate which purchased vehicles count for compliance and which count for credits and therefore maximize their credits, (2) base this designation on date of purchase, or (3) design some other reasonable approach into the SIP submittal.

The LDV/LDT credit weightings provided in the proposed regulations are based solely on emission standards and do not reflect any subclass differences in fleet mileage or time in fleet. Based on data currently available, there appears to be little air quality benefit in adding this complexity to the credit weights. Furthermore, any such weighting would, at best, be based on average usage patterns for each subclass and, because there would be no control over who generates, uses, or exchanges credits, fleet by fleet credit uncertainties would still exist. EPA requests comment on this approach to LDV/LDT credit weighting.

c. *HDV Credit program—Pollutant applicability.* Unlike the expected light-duty standards, the expected heavy-duty LEV, ULEV and ZEV standards involve a combined NMHC and NO_x standard. A separate set of credit weighting factors based on NMHC only is therefore not likely to be feasible. EPA proposes, therefore, to base credit weightings on the NMHC+NO_x standard. The discussion in the above subsection regarding LDV/LDT credit weightings for CO nonattainment areas applies to HDVs as well.

Credit values. Although the provisions of the CAA do not permit credit exchanges between light and heavy-duty vehicles, they do not provide for the prohibition of credit exchanges among vehicles in different heavy-duty vehicle subclasses: the light, medium, and heavy heavy-duty vehicles (LHDVs, MHDVs, and HHDVs, respectively).

Two points should be noted in this regard. First, although the CAA excludes HDVs in subclasses above 26,000 lbs GVWR (the HHDVs) from the fleet program purchase requirements, it does not specifically prohibit them from generating credits. The HHDV subclass encompasses a large variety of vehicle chassis designs. Many HHDVs are predominantly urban use vehicles, such as concrete mixer trucks, garbage haulers, and beverage trucks, while others are more typically used for long haul, over the road operations, such as freight hauling and automobile transport. The former group is comprised largely of two and three axle single unit trucks, while the latter group is typically a combination of a truck-tractor and trailer(s).

HHDVs have some significant dissimilarities in terms of use. According to the 1987 Census of Transportation, single unit trucks are predominantly used in local or short range operations, whereas combination trucks are used more for long trips. Average annual mileage for various single unit truck types ranges from about 20 to 30 thousand miles, but exceeds 75,000 miles for combination trucks.

Given that most HHDVs appear to fall into two distinct groups, EPA is proposing to make single unit HHDVs eligible for generating credits, but to exclude combination HHDVs and other designs. This proposal is based on the premise that single unit HHDVs are predominantly operated in the area where registered, the use, in some of these vehicles, of engine models also used in MHDVs, and the likelihood that urban fleets containing LHDVs and MHDVs (subject to compliance requirements) might also include some single unit HHDVs.

Regarding combination-type HHDVs, based on the types of vehicles involved and the likelihood that many would not be centrally fueled or operated largely within a single nonattainment area, EPA believes that including these vehicles in the credit program would at best be marginally useful and difficult to administer. The above factors suggest a relatively small number of potentially available vehicle applications and thus high per-vehicle design and manufacturing costs. Designing such vehicles to meet clean fuel standards, and to perform well in use, is expected to be a difficult task. The incentive for manufacturers to design and produce such vehicles for a credit-producing market only is not likely to be large. Therefore, EPA proposes not to include combination-type HHDVs in the HDV credit program. Comment is requested on this proposal.

The second issue is that of cross-subclass credit exchanges among HDVs. In the recently promulgated final rule regarding the trading and banking of HDE NOx and particulate matter emissions (55 FR 30584, dated July 26, 1990) and in an earlier rule regarding averaging programs (50 FR 10606, dated March 15, 1985), EPA did not permit cross-subclass credit exchanges, citing potential manufacturer equity and environmental impact concerns. During those rulemakings, it was noted that, even if manufacturer equity issues could be resolved, EPA did not have adequate data on the operating and use characteristics of the subclasses involved to develop the prorating factors which would be necessary to resolve the environmental concerns.

There are no manufacturer equity issues involved in the fleet credit program, but the concerns over environmental impacts remain. LHDVs are predominantly 8,500 to 12,000 lbs GVWR, MHDVs are 19,500 to 26,000 lbs GVWR, and single unit HHDVs can approach 80,000 lbs GVWR. There are significant differences in design and application among these subclasses which result in large differences in useful life, fleet life, rebuild practices, fuel consumption, annual mileage, and duty cycle, among other factors. All of these factors impact the per-vehicle emission rate and total vehicle/engine lifetime emissions. Allowing cross-subclass trading without a prorating factor accounting for these differences would lead to an emissions increase in those cases where the credit-using vehicle had a longer life, more rebuilds, worse fuel consumption, etc. than the credit-generating vehicle. A prorating factor covering these differences would be needed to allow cross-subclass trading. Moreover, permitting single unit HHDVs to generate credits is meaningless if these credits cannot be used to demonstrate compliance with LHDV or MHDV purchase requirements. However, at this point in time, the data needed to develop reliable prorating factors is not available.

Thus, EPA requests comment and input on the information needed to develop the prorating factors. Information is needed for fleet vehicles in the various subclasses on miles in fleet life, fuel, consumption, fuel economy, rebuild practices, load factors, and duty cycles (speed, accelerations, decelerations, etc). These factors vary for gasoline and diesel engines and so data for both is needed. Information on other clean fuel engines would also be helpful.

If adequate data is provided in the comments, EPA will develop factors based on this data for the final rule. In the event that sufficient data is not forthcoming, EPA will use conservative prorating factors to ensure that the credit program does not result in a net loss of environmental benefits. In today's proposal, subclass trading is allowed in the downed direction without proration. That is, credits generated by the purchase of HHDVs or MHDSVs can be used to demonstrate compliance with

MHDV or LHDV requirements on a one-for-one basis. EPA considers this to be generally conservative based on current information. Trading in an upward direction, that is, using credit generated by the purchase of LHDVs to satisfy MHDV purchase requirements requires a yet to be determined, conservative prorating factor. With this approach, it is also necessary to designate LHDV-generated credits as such in order to ensure that any upward credit trading receives the proper proration at time of redemption. Today's proposed regulations reflect this approach. Suggestions for other approaches are also solicited.

With regard to credit calculations for HDVs, as with light-duty calculations, credit calculations for early/extra purchases of LEV, ULEV, or ZEV HDVs are based on equation (3) and the NMHC+NOxx standards in table 3. Credit calculations involving the ULEV and ZEV purchases which are also begin used to demonstrate compliance use equation (4). Because the prorating factors of cross-subclass trading are not available at this time, the resulting credit values provided in tables C–3.1 to C–3.3 of the proposed regulations can be viewed as vehicle-equivalent values specific to the subclass in which generated. That is, they are not normalized to one subclass or the other. These will need to be adjusted in the final rule when prorating factors become available. EPA requests comment on the issue of HDV subclass trading.

B. Exemptions From TCMs

1. General Exemptions

As required by section 246(h) of the GAA, regulations are proposed today to exempt clean fuel fleet vehicles from time of day, day of week and other similar transportation control measures. Under the proposal, the exemptions would be limited to those TCMs existing for air quality reasons with restrict vehicles from operating based upon temporal factors, because such TCMs are clearly similar to the two types of TCMs listed in the statute. Therefore, measures which forbid vehicle transit only during certain hours of the day, days of the week, days of the month, or during any other defined period of time would not apply to eligible clean fuel fleet vehicles, except as noted in the next paragraph. All eligible clean fuel fleet vehicles (LEVs, ULEVs and ZEVs), would be equally exempt from the temporal-based TCMs.

EPA is proposing that temporal-based TCM exemptions not include those TCMs for which the temporal element is secondary to some other control element. For example, TCMs which create high-occupancy vehicle traffic lanes during certain times of day would not qualify as temporal-based TCMs. However, time-based TCMs which restrict access of certain types of vehicles to certain areas or locations would qualify as temporal-based TCMs, and would therefore be subject to exemption for clean fuel fleet vehicles. In addition, mandated exemptions would not apply to temporal-based TCMs for which such exemptions would create a clear and direct safety hazard.

EPA has elected to take a relatively narrow approach to the general TCM exemptions available to all fleet CFVs, in part because of concerns that a broader approach would be inconsistent with the intent of the clean fuel fleet and TCM programs of the Act. The goal of both of these programs is to reduce emissions in some of the worst non-attainment areas, and TCM exemption provisions were added as an incentive for fleet owners. However, he emission standards enacted for clean fuel fleet vehicles are not adequately stringent to require significant improvements of changes in the fuel or engine/emission control technology used in these vehicles relative to those expected in other areas of the country during the same time frame. EPA expects that conventional, or at most reformulated gasoline will be the fuel of choice, and vehicles will likely be able to meet the clean fuel fleet emission standards using reformulated gasoline and certain engine/emission control system improvements. For California and other states which adopt the California standards, the clean fuel vehicles will be meeting the same standards as vehicles being sold to the general public. Furthermore, the clean fuel fleet emission standards for light-duty vehicles and light-duty trucks up to 3750 lbs. LVW are of about the same stringency as the pending Phase II tailpipe standards for conventional vehicles of the same classes as contained in section 203(i) of the Act. Thus, it is conceivable that in the post 200 time frame, new clean fuel fleet vehicles and conventional vehicles throughout the country would have the same general emission rates. Also, since the emission standards program enacted for clean fuel fleet vehicles do not guarantee emissions reductions relative to vehicles being sold to the general public, allowing expended TCM exemptions for all fleet CFVs could significantly erode the environmental benefit expected from the TCM provisions. Given these circumstances, EPA does not believe it would be appropriate to provide expanded TCM exemptions for all clean fuel fleet vehicles equally.

However, it would be more appropriate to provide expanded TCM exemptions for fleet vehicles which have lower emission rates than is required of all other fleet CFVs. More specifically, one way to provide expanded TCM exemptions without raising concerns about loss of environmental benefits from the TCM program would be to provide expanded exemptions only to fleet CFVs which have inherently low emissions characteristics relative even to other CFVs. Thus, as an option, EPA is proposing such a program as is discussed below. If adopted, this option would be implemented in addition to the core of temporal TCM exemptions discussed above.

2. Expanded Exemptions for ILEVs

EPA is proposing an approach for expanded TCM exemptions, based on a recognition of the environmental benefit provided by CFVs which have inherently low emissions relative to their conventional gasoline-fueled counterparts. Inherently low-emission vehicles (ILEVs), as described below, would qualify for expanded TCM exemptions, and states would receive SIP credits commensurate with the emission reductions anticipated. Qualification as an ILEV would be based on a vehicle's evaporative and exhaust emission characteristics. Such a program would be entirely voluntary on the part of the vehicle manufacturers and fleet operators. If sufficient demand for such vehicles were to develop and a manufacturer were to decide to certify vehicles as ILEVs, these vehicles could be bought by fleet purchasers desiring to take advantage of the expanded TCM exemptions.

In keeping with the focus of the fleet program on ozone reduction, the approach being taken aims at substantial reductions in the primary ozone precursors: Hydrocarbons and NOx. Recognizing that the expected CFV hydrocarbon exhaust emissions standards (which all fleet CFVs must meet) are already very low, and represent substantial reductions over those of conventional vehicles, the focus for additional hydrocarbon reductions from ILEVs is on evaporative emissions. EPA has selected this approach because a large portion of ozone forming emissions from typical in-use vehicles are due to evaporative emissions. This approach would provide appropriate recognition of the very low in-use evaporative emission levels which some

vehicle engine/fuel system designs can achieve. The additional focus on NOx reductions is to assure that NOx standards for ILEVs involve reductions from conventional vehicle NOx standards for each of the vehicle subclasses (see table 3).

Vehicle models which manufacturers would wish to qualify as ILEVs would have to meet at least two criteria. First, the vehicles' engine/fuel systems would have to be certified to meet an evaporative emissions standard without the use of any auxiliary emission control devices to reduce or control evaporative emissions (e.g., carbon canister, purge system, etc.). For closed fuel systems, the designs must be such that a leak (to atmosphere) anywhere within the system would render the vehicle inoperative through a relatively quick loss of fuel supply. This recognizes the contribution of leaks to emissions, but also recognizes that substantial fuel loss would provide a strong incentive for repair thus reducing the likelihood that emissions from leaks would continue for long.

This requirement would ensure that ILEVs are vehicles that, even in their uncontrolled state, produce fuel evaporative hydrocarbon emissions in total (hot soak, diurnal, running loss) at a level corresponding to only a small percentage of what their uncontrolled conventional gasoline counterparts would emit. This is important from an emissions reduction standpoint because EPA test data show that the average evaporative emissions for typical vehicles in use greatly exceed the certification standards for evaporative emissions, due in large part to vehicles which develop malfunctions in their evaporative control systems. An ILEV would have inherently low evaporative emissions so that any evaporative control system problem would not result in large in-use emissions. Therefore, a significant environmental benefit would be expected in use as compared to conventional gasoline vehicles equipped with evaporative emission controls.

Under this evaporative emissions performance requirement, the test vehicle would have its uncontrolled evaporative emissions measured (hot soak, running loss, one high temperature diurnal). The sum of all those measured evaporative emissions could not exceed the ILEV qualification standard. Based on the improved evaporative emissions control test procedure currently under consideration, EPA is proposing for comment an ILEV qualification standard on the order of 2 to 5 total grams per test. The ILEV qualification test procedure would follow the evaporative test procedure which exists at the time qualification is sought. However, if the evaporative test procedure in use at that time involves a series of multiple high temperature diurnals (as is proposed in a recent **Federal Register** notice (55 FR 49914, December 3, 1990)), only one high temperature diurnal would be required for ILEV qualification. Of course, the vehicle would also have to be tested under the full evaporative test procedure, and any vehicle model with uncontrolled evaporative emissions exceeding the then existing title II evaporative emissions standard would have to install a control system to meet that standard. Because ILEV qualification would be available only for clean fuel vehicles, such testing could be conducted as part of the normal LEV, ULEV, or ZEV certification, or, at the Administrator's option, it could be done separately. For vehicles without a "fuel tank," such as dedicated electric vehicles, it may be possible to conduct certification by engineering analysis in lieu of testing. EPA also requests comment on how testing should be conducted for pressurized systems, which cannot be tested with their "controls" deactivated.

The second ILEV qualification criterion would be that, in addition to meeting the CFV exhaust emission standards, ILEVs in all vehicle classes also meet lower exhaust emission standards for NOx to ensure additional NOx control compared to conventional vehicles. In the case of heavy-duty vehicles, a lower NMHC+NOx standard would apply because the clean fuel HDV standards do not include a separate NOx standard. For other pollutants, the minimum exhaust emission standards for ILEV certification would be the CFV standards. The ILEV exhaust emission standards are shown in table 4. It should be noted that the heavy-duty standards shown are based on the State of California LEV program standards. These, as well as the light-duty ILEV standards, are subject to change if the finalized federal CFV standards are different from these values. These vehicles/engines would also comply with all requirements of Title II of the clean Air Act, as amended, which are applicable in the case of conventional gasoline, methanol-fueled or diesel vehicles/engines of the same vehicle class and model year, unless otherwise determined.

TABLE 4.—ILEV EXHAUST EMISSION STANDARDS

Vehicle/engine class/subclass [1] [2] [3]	Miles [4]	NMOG	CO	NOx	PM [5]	HCHO
Light-duty vehicles	50,000	0.075	3.4	0.2		0.015
	100,000	0.090	4.2	0.3	0.08	0.018
Light-duty trucks, 0–6000 lbs GVWR, 0–3750 lbs LVW	50,000	0.075	3.4	0.2		0.015
	100,000	0.090	4.2	0.3	0.08	0.018
Light-duty trucks, 0–6000 lbs GVWR, 3751–5750 lbs LVW	50,000	0.100	4.4	0.4		0.018
	100,000	0.130	5.5	0.5	0.08	0.023
Light-duty trucks, 0–6000 lbs GVWR, 0–3750 lbs LVW	50,000	0.125	3.4	0.2		0.015
	120,000	0.180	5.0	0.3	0.08	0.022
Light-duty trucks, 0–6000 lbs GVWR, 3751–5750 lbs TW	50,000	0.160	4.4	4.4		0.018
	120,000	0.230	6.4	0.5	0.10	0.027
Light-duty trucks, 0–6000 lbs GVWR, 5751–8500 lbs TW	50,000	0.195	5.0	0.6		0.022
	120,000	0.280	7.3	0.8	0.12	0.032

Heavy-duty engines [1] [6]	Miles	NMHC+NOx	CO	PM [5]	HCHO
	See 40 CFR 86.090–2.	2.5	14.4	0.10	0.05

[1] Exhaust emission standards, as measured under the applicable Federal Test Procedures in 40 CFR part 86. These vehicles/engines shall also comply with all requirements of title II of the Clean Air Act which are applicable to conventional gasoline, methanol-fueled or diesel vehicles/engines of the same vehicle/engine class and model year, unless otherwise determined.
[2] In grams/mile.
[3] LVW-loaded vehicle weight, TW-test weight, GVWR-gross vehicle weight rating.
[4] Standards are applicable up to the indicated number of miles/years.
[5] Standards for particulate matter (PM) apply only to diesel-fueled vehicles
[6] In grams/BHP-hr.

SIP emission reduction credits for the states would be based on the expected nominal difference between the emissions for a conventional gasoline-fueled vehicle and an ILEV within each vehicle class. Comparing evaporative emission rates of conventional vehicles to those anticipated for vehicles which may qualify as ILEVs, such as dedicated electric, compressed natural gas, ethanol, or methanol vehicles, EPA believes that SIP hydrocarbon credits of about 0.30 to 0.35 grams per mile per vehicle could be anticipated, based on analyses presented in recent EPA special reports regarding alternative fuels. This estimate is preliminary because it is based on modeling under Mobile 4.0. If the ILEV program is finalized, the level of SIP credits will be calculated to reflect EPA's modeling results under Mobile 4.1 or subsequent versions. The additional reductions provided by the more stringent ILEV standards for NO_x ($NMHC+NO_x$ for heavy-duty engines) would also be factored into the SIP credit calculations. However, ILEVs which also qualify as credit-generating ULEVs or ZEVs would be excluded from this aspect of the calculations because they would also generate fleet program vehicle credits that can be redeemed to demonstrate compliance with CFV purchase requirements. The ILEV emission reduction could also be incorporated into a source trading program as discussed in section II.A.2.b of this notice, if such a program were adopted. Obviously, the SIP credit would be reduced accordingly.

Of course, ILEVs would qualify for the general TCM exemptions discussed above. Under the option proposed today, ILEVs would also be exempt from restrictions on high occupancy vehicle lanes ("HOV restrictions"). In addition, EPA intends to exempt ILEVs, to the extent practicable, from all other existing and future TCMs that are not safety related. However, because the specific TCMs to be adopted in the covered areas are yet to be determined, today's proposed option only extends expanded exemptions to HOV restrictions. EPA requests comment on other existing or proposed TCMs that should be included. If the ILEV proposal is finalized, EPA expects to designate, in future regulatory actions, additional TCMs from which expanded exemptions will be granted. Measures for which such exemptions would create a clear and direct safety hazard would not be included.

EPA is proposing that the ILEV program be formulated and administered by the EPA in order to ensure that interested manufacturers and fleet owners have consistent requirements to work toward, as well as a clear definition of the program and its requirements as early as possible. Basing the ILEV program on approved SIP revisions would jeopardize its implementation by introducing uncertainty over how (and perhaps if) the program would function. Major development and planning delays would likely occur while awaiting state by state SIP decisions. Furthermore, EPA asks comment on the consistency of expanded TCM exemptions for ILEVs with the language of section 246(h) referring to TCM exemptions for "any clean-fuel vehicle that meets the requirements of this section." Comment is specifically south which addresses EPA's authority under this provision to implement the ILEV program described in today's proposal. EPA also seeks comment on the option of implementing the ILEV program under the provisions of section 182. EPA also requests comment on the practicality and legality under the Act of extending the ILEV program beyond the covered areas defined in section 246 of the Act. Such a program extension would expand TCM exemptions for ILEVs to marginal and moderate nonattainment areas, or perhaps even nationwide.

Recognizing the constraints imposed by attempting to verify at a federal level that ILEVs are being operated solely on clean alternative fuels in the covered areas, EPA proposes that participation in the ILEV program be limited to dedicated-fuel vehicles and dual-fuel vehicles which are certified as ILEVs on both fuels. In this way adequate assurance of proper fuel use would be provided at time of vehicle certification. However, if flexibly fueled vehicles can qualify as ILEVs, EPA is interested in allowing their participation as well and requests suggestions on how this can be accomplished without resorting to a burdensome fuel use verification program at the federal level.

Finally, EPA asks for comment on the overall appropriateness and desirability of the ILEV program, the ILEV qualification and certification criteria, the level of the ILEV qualification standards, and the TCM exemptions to be granted.

3. Implementation Issues

a. *Eligibility.* EPA is proposing that exemptions from temporal-based TCMs be available for any CFV purchased to meet the fleet program requirements or eligible to generate credits. This would include CFVs belonging to fleet owners who are not required by law to purchase CFVs but who do so to generate credits under SIP-established fleet programs which allow it. Making TCM exemptions available only to the larger, regulated fleets creates a competitive disadvantage for the smaller, unregulated fleets. Allowing the owners of fleets not subject to the compliance requirements to join the program voluntarily by buying CFVs would address this concern and, depending on the degree of trading, may also expand the program's environmental benefits.

Under the ILEV option included in this proposal, the ILEV manufacturers or their agents would be responsible for determining whether or not a fleet owner who is purchasing an ILEV is eligible to receive ILEV labels for the vehicle, and thus to take advantage of expanded TCM exemptions. EPA proposes that any fleet owner who owns and operates at least ten motor vehicles be allowed to take advantage of the expanded exemptions. EPA proposes that all of the following must be provided to demonstrate eligibility: (1) Photocopies of nine motor vehicle registrations, not including the ILEV vehicle to be purchased, indicating registration in the ILEV purchaser's name, (2) a signed statement by the ILEV purchaser that these vehicles are operational in the purchaser's fleet and that the ILEV being purchased will also be operated in this fleet, and (3) a signed statement by the ILEV purchaser that the ILEV labels will be removed and disposed of when the vehicle is sold, given, leased (except as part of a daily rental fleet), or offered for long-term loan to someone who has not demonstrated eligibility for ILEV labels (according to the above criteria).

No eligibility restrictions based on central fueling capability or location of the vehicles would be included. Of course, the exemptions would only apply when an ILEV is operating in areas covered by the ILEV program. In addition, the states would be allowed to extend eligibility for expanded TCM exemptions to other ILEV purchasers if they chose to do so. Comment is requested on these eligibility proposals.

b. *Schedule.* EPA desires that the TCM exemptions be made available as early as practicable in order to provide incentive for the early introduction of clean fuel vehicles. The Act does not specify a date by which the TCM exemptions are to be effective. However, section 246(h) limits the general temporal-based TCM exemptions to "any clean fuel vehicle that meets the requirements of this section." Thus, these exemptions cannot become effective prior to the time those requirements are known and implemented. To know whether a vehicle meets the requirements of the fleet section, the following events must occur.

First, EPA must promulgate the CFV emission standards needed for the fleet program. Second, vehicles that are certified to those standards must be available. Third, SIP revisions establishing the fleet program must be approved by the EPA. Such revisions are necessary to ensure that the vehicles meet the requirement of the fleet section concerning the use of clean fuels when operating in the covered area and that the vehicles are part of covered fleets or fleets eligible for credits under the fleet program. Fourth, the practical implementation of the program necessitates that labeling requirements be in place.

EPA does not have control over the timing of the satisfaction of all of these requirements. EPA intends to promulgate the necessary emission standards by November 15, 1992. Given that participation by the vehicle manufacturers and converters is voluntary, however, it is not possible for EPA to determine the date on which vehicles certified to those standards will in fact become available. Moreover, EPA cannot ensure that the requirements that are to be contained in SIP revisions will be met prior to the statutory deadline for the submission of such revisions. Inasmuch as the states are not required by the CAA to submit these SIP revisions until May of 1994, forty-two months after the enactment of the Clean Air Act Amendments, EPA cannot mandate an earlier SIP submittal date. In sum, the earliest date that the general temporal-based TCM exemptions can become effective in a covered area is the effective date of EPA's approval of the SIP revision implementing that area's fleet program. EPA proposes that the effective date of the general temporal-based TCM exemptions be simultaneous with the SIP approval, provided that the CFV emission standards have been promulgated by that date. As EPA has six months in which to approve or disapprove a SIP submittal, the effective dates for the various states involved would likely be in late 1994, but could be earlier in states which submit their SIP revisions prior to the statutory deadline.

EPA has somewhat more control over the start date of the expanded TCM exemptions related to the ILEV program because this option would not be implemented via SIP's, although SIP credits would be provided for ILEVs as previously discussed. TCM exemptions for ILEVs are proposed to be available in all covered areas when all of the following requirements have been satisfied. First, EPA must promulgate the CFV emission standards and finalize the ILEV program. Second, vehicles must be available which meet ILEV program requirements. Third, provisions must be in place to ensure that qualifying vehicles use the necessary clean fuel. Fourth, practical implementation of the program would require that eligible vehicles be prominently labeled. These requirements provide the framework necessary to ensure that the emission reductions called for by the ILEV program are achieved.

Although participation by the vehicle manufacturers and converters is voluntary, EPA is proposing to take actions to ensure that conditions are in place which will allow the manufacturers and fleet operators to participate in the ILEV program as early as practicable. EPA plans to finalize the ILEV program requirements later this year and the CFV emission standards by November 15, 1992. As discussed previously, the fuel use validation requirement would be satisfied by dedicated-fuel ILEVs and it may also be satisfied by flexibly fueled ILEVs provided a workable validation process can be found. As proposed below, the labeling program would be prescribed in this rulemaking. Therefore, it is expected that the expanded TCM exemptions could be made available by the end of 1992. EPA asks for comments on these proposed schedules for general and expanded TCM exemptions.

c. *Labeling.* In order to successfully implement the TCM exemptions, it is expected that the clean fuel vehicles making use of the exemptions will need to be clearly identified as such, and that ILEVs will need to be specially identified. Because most CFVs are expected to look very much like conventional vehicles, it is important to avoid public misunderstanding about why these vehicles are being operated in places and at times in which apparently identical vehicles are prohibited. Furthermore, law enforcement officers should have a clear indication that these vehicles are not violating TCM ordinances. For the labeling of CFVs which are not ILEVs but which qualify for the general temporal-based TCM exemptions, it is proposed that the states design and administer their own labeling programs. These programs would be defined in the appropriate SIP submittals. Special license plates, license plate tabs, windshield or side panel decals, or other markings may be used.

Because the ILEV program is being proposed as an EPA program, and based on the simplified methods of determining ILEV program eligibility and fuel use verification discussed above, the following approach to ILEV labeling is proposed. Manufacturers wishing to certify ILEVs shall provide positive ILEV identification in the vehicle identification number (VIN). Labels, in the form of nontransferable decals, would be installed by the manufacturers or their agents on ILEVs at the time of sale to qualifying fleet owners. Three labels would be required for each vehicle, one on the back and one on each side. ILEV owners would be required to remove and dispose of the labels when selling or giving away the ILEV or offering it for lease or long-term loan, unless the ILEV is part of a daily rental fleet or unless the person who is receiving the vehicle is qualified to take advantage of the expanded TCM exemptions. No person is permitted to install an ILEV label or any facsimile of an ILEV label on any vehicle unless allowed to do so under state regulations which expressly expand the ILEV program and label eligibility.

The exact form of the label design will be included in the final rule. It is proposed that it be made of a durable material which cannot be removed without destroying the label and that it contain three rows of green letters on a white rectangular background about eight inches high by twenty four inches wide. The first row of letters, roughly three-quarters of an inch high, would read: "Certified to EPA standards as an", and the second and third rows of letters, roughly one and one-half inches high, would read "INHERENTLY LOW" and "EMISSION VEHICLE". Comment is requested on this proposed labeling format, especially on whether some flexibility is required in order to allow for variations in body contours and on whether a more complicated format, such as one involving a logo, is desirable in order to discourage counterfeiting.

d. *Transferability.* EPA is proposing the following requirements regarding

TCM exemption transferability: First, EPA is proposing that TCM exemptions may not be traded and are not effective outside of the nonattainment areas to which the SIP revision applies. This is based on the fact that the fleet program in which these exemptions are created is a CAA program designed specifically for these areas. Second, EPA is proposing that the TCM exemptions for which a vehicle qualifies may only be exercised with that vehicle and may not be transferred to another vehicle within the same fleet or as part of a credit transaction. Unlike credits, TCM exemptions would not be marketable. Third, EPA is proposing that any TCM exemption applying to a qualifying vehicle be effective only as long as the vehicle remains in compliance with the performance standards and other vehicle requirements. EPA asks for comment on these proposals, and seeks alternative approaches and input on the degree to which such restrictions should be left to the states within the constraints of the provisions of the Act.

e. *Coordination with section 182(e)(4).* Finally, it is noteworthy that section 182(e)(4) of title I of the Act, regarding TCMs in extreme ozone nonattainment areas, permits the establishment of TCMs applicable during heavy traffic hours to reduce the use of high polluting vehicles or heavy-duty vehicles. This section provides for these TCMs notwithstanding any other provision of law. On the other hand, section 246(h) of title II of the Act expressly requires mandatory TCM exemptions for clean fuel fleet vehicles notwithstanding title I. EPA believes that these two provisions can be harmonized by interpreting the application of section 182(e)(4) to heavy-duty vehicles as only affecting vehicles other than clean fuel vehicles. This is consistent with the ozone-reduction goals of the TCM programs and the fleet programs, whose TCM exemptions would apply only to low-emitting clean fuel fleet vehicles. Furthermore, as proposed, the fleet program exemptions would not apply to the vehicles most likely to cause traffic congestion during heavy traffic hours: the combination-type heavy HDVs. EPA requests comment on this approach.

C. Federal Fleets Provisions

Subpart C of the CAA contains several provisions which apply to certain fleets and facilities owned or operated by an agency, department, or instrumentality of the United States. The federal fleets provisions are described in section 248 and a federal obligation to make clean fuel available to the public is contained in section 246(g). Section 248(a) requires that covered federal fleets be subject to the general provisions of the fleet program, in addition to the special requirements for federal fleets. Thus, each federal fleet must comply with the requirements of the fleet program as it exists in the nonattainment area where such fleet operates. Federal fleets will be regulated on a covered area by covered area basis.

Section 248(e) allows that certain vehicles of the Department of Defense (DOD) may be exempt from the requirements of the fleet program if the Secretary of Defense certifies to the Administrator that an exemption is needed based on national security considerations. All other vehicles in federal fleets which meet the criteria set forth for non-federal covered fleets are included under the requirements of the fleet program as prescribed in the various sections of subpart C. This includes non-exempt DOD vehicles as well as those operated/controlled by the U.S. Postal Service, General Services Administration, and the various other agencies, departments and instrumentalities of the United States.

Section 246(g) provides that federal facilities where fleets subject to the fleet program requirements are refueled shall make clean alternative fuel available to the public during reasonable business times, subject to national security concerns, if such fuel is not commercially available for retail sale to the public in the vicinity of the facility. EPA interprets this to mean that federal facilities are not required to supply any clean alternative fuel desired by the public but only those clean alternative fuels that the participating federal fleet is using. The Act contains no provisions regarding the price to be charged for such fuel, although it is reasonable to expect that all costs involved would be recovered and applicable taxes would be collected.

Considering that federal facilities would not be expected to conduct their refueling operations as a for-profit business, there may be some concern about potential impediments to the fleets program created by their involvement. One possible concern is the discouragement of clean alternative fuel sales at commercial stations due to underpriced federal fuel. Another is potential operational disruptions of fleets dependent on federal facility refueling in the event of changes in the types of fuel used by these facilities. Comment is requested on the need for further requirements in this rule to address such concerns and on what these requirements should be.

EPA proposes implementational definitions of several of the terms contained in section 246(g). "Vicinity" is proposed to be within a 5 mile radius of the main entrance to the facility. Reasonable business times are proposed to be the normal business hours of the refueling facility used for the covered federal CFVs. This would normally be at least 8 hours per day excluding days when the refueling facility may be closed such as federal holidays and week-ends. The national security exemption to fuel availability requirements is proposed to be read as equivalent to the national security exemption to the vehicle purchase requirement: the Secretary of Defense must certify to the Administrator that a facility cannot permit the public to refuel due to national security considerations. Comment is requested on EPA's proposed definitions.

III. Public Participation

A. Comments and the Public Docket

As in the past rulemaking actions, EPA strongly encourages full public participation in arriving at final decisions. In addition to those areas where specific comment has been requested, EPA solicits comments on all aspects of today's proposal from all interested parties. Whenever applicable, full supporting rationale, data and detailed analyses should also be submitted to allow EPA to make maximum use of the comments. Commenters are encouraged to provide specific suggestions for improvements to any aspect of the proposal, especially with regard to provisions established by EPA that could be left to the states or vice-versa. All comments should be directed to the EPA Air Docket Section Docket No. A–91–25 (see "**ADDRESSES**"). Comments will be accepted until November 18, 1991.

B. Public Hearing

Any person desiring to present testimony at the public hearing (see "**DATES**") should notify the contact person listed above of such intent at least seven days prior to the day of the hearing. The contact person should also be provided an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling the order of testimony.

It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for

distribution to the audience. In addition, it will be helpful for EPA to receive an advance copy of any statement or material to be presented at the hearing prior to the scheduled hearing date, in order for EPA staff to give such material full consideration. Such advance copies should be submitted to the contact person listed above.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony.

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, is hereby designated presiding Officer of the hearing. The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made.

IV. Statutory Authority

The statutory authority for this proposal is provided by sections 110, 118, 241, 246, 248, and 301(a) of the CAA (42 U.S.C. 7410, 7418, 7581, 7586, 7588, and 7601(a))

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an effect on the economy of $100 million or more, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase for the affected product.

This notice, covering credit programs, TCM exemptions, and federal fleets is significant in that it proposes important provisions of the overall fleet program prescribed in sections 246 and 248 of the 1990 CAA Amendments. However, this proposal is not "major" according to the established criteria. The CAA requires that the general fleet program be implemented through revisions to State Implementation Plans at a later date. The credit program proposed in this notice will actually help to reduce the costs of compliance with the base fleet program and the TCM exemption provisions provide, at least directionally, an opportunity for a reduction in the operating costs of the affected fleets. Also, the proposed regulations will have either neutral or salutary effects on competition, investment, employment and innovation. Therefore, I have determined that the proposal does not constitute a major regulation.

Due to the limited scope of today's proposal, the above-described beneficial impact of it on fleet operators, and the schedule constraints of the CAA, EPA has decided not to perform a detailed economic assessment at this time. However, as part of the CFV emissions standards rulemaking planned for 1992, EPA intends to assess the economic impact of the general fleet program required by the CAA. This assessment will be made available in the public docket.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this rulemaking.

VI. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Administrator is required to certify that this regulation will not have a significant economic impact on a substantial number of small business entities. As already mentioned above, none of the provisions of this regulation levy additional requirements on small entities, and, in fact, the credit programs and the TCM exemptions would be expected to have salutary effects on fleet owners. Thus I certify that this rule will not have a significant adverse impact on a substantial number of small entities.

VII. Information Collection Requirements

EPA has determined that the regulations proposed in this notice do not create any new information collection requirements.

List of Subjects in 40 CFR Part 88

Administrative practice and procedure, Air pollution control, Gasoline, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 20, 1991.

William K. Reilly,

Administrator.

For reasons set forth in the preamble, 40 CFR part 88, as proposed to be added at 56 FR 48623 on September 25, 1991, is proposed to be amended as set forth below.

PART 88—CLEAN FUEL VEHICLES

1. The authority citation for part 88 is revised to read as follows:

Authority: Secs. 110, 118, 241, 246, 248, 301(a), Clean Air Act as Amended; 42 U.S.C. 7410, 7418, 7581, 7586, 7588, and 7601(a).

2. Subpart A as proposed to be added at 56 FR 48623 is republished for the convenience of the reader:

Subpart A—Emission Standards for Clean Fuel Vehicles

Subpart A—Emission Standards for Clean Fuel Vehicles

§ 88.101–94 Definitions.

The definitions in 40 CFR part 86 of this chapter also apply to this subpart. The definitions of this section apply to all of part 88.

Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Low-Emission Vehicle standard, or any heavy-duty vehicle with an engine conforming to the applicable Low-Emission Vehicle standard.

Non-methane Organic Gas is defined as in section 241(3) Clean Air Act as amended (42 U.S.C. 7581(3)).

Transitional Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Transitional Low-Emission Vehicle standard.

Ultra Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Ultra Low-Emission Vehicle standard, or any heavy-duty vehicle with an engine conforming to the applicable Ultra Low-Emission Vehicle standard.

Zero-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Zero-Emission vehicle standard, or any heavy-duty vehicle conforming to the applicable Zero-Emission Vehicle standard.

§ 88.102–94 Abbreviations.

The abbreviations of part 86 of this chapter also apply to this subpart. The abbreviations in this section apply to all of part 88.

LEV—Low-Emission Vehicle.
NMOG—Non-Methane Organic Gas.
TLEV—Transitional Low-Emission Vehicle.
ULEV—Ultra Low-Emission Vehicle.
ZEV—Zero-Emission Vehicle.

3. Subpart C is added to part 88 to read as follows:

Subpart C—Centrally Fueled Fleets Program

Tables to Subpart C of Part 88

Subpart C—Centrally Fueled Fleets Program

§ 88.301 Scope.

Applicability. The requirements of this subpart apply to the following:

(a) State Implementation Plan revisions at 40 CFR part 52 made pursuant to sections 110 and 246 of the Clean Air Act, 42 U.S.C. 7410 and 7586 (hereafter referred to as the "SIP revisions").

(b) All agencies, departments and instrumentalities of the United States that are subject to the fleet programs established by the SIP revisions.

§ 88.302 Definitions.

(a) The definitions in subpart A of this part also apply to this subpart.

(b) *Single unit truck* means a self-propelled motor vehicle built on one chassis which encompasses the engine, passenger compartment, and cargo carrying function, and not coupled to trailered equipment.

§ 88.303 Abbreviations.

The abbreviations in subpart A of this part and in 40 CFR part 86 apply to this subpart.

§ 88.304–95 Clean fuel fleets credit program.

(a) *General.* (1) The SIP revisions shall provide for a credit program to enable fleet owners and operators who are required to participate in the fleet program to meet the clean fuel vehicle purchase requirements through use of credits, as well as by purchase of clean fuel vehicles.

(2) All credit-generating vehicles must meet the applicable emission standards and other requirements contained in subpart A of this part.

(b) *Credit generation.* (1) Credits may be generated by any of the following means:

(i) Purchase of LEVs, ULEVs or ZEVs earlier than LEVs are required to be purchased under the SIP revision;

(ii) Purchase of greater numbers of LEVs than are required under the SIP revision; or

(iii) Purchase of vehicles that meet the ULEV or ZEV emission standards.

(2)(i) For light-duty vehicles and light-duty trucks, credit values shall be determined in accordance with table C–1. The state shall use table C–1 exclusively in determining light-duty vehicle and light-duty truck credit values. Table C–1.1 applies to paragraphs (b)(1) (i) and (ii) of this section; table C–1.2 applies to paragraph (b)(1)(iii) of this section.

(ii) In lieu of determining credit values in accordance with table C–1, a state may specify in its SIP revision that Table C–2 will be used to determine LDV and LDT credit values in one or more affected nonattainment area. Any state choosing to do so must provide adequate justification, based on air quality benefits, at the time the SIP revision is submitted. If the use of table C–2 is approved by EPA, the State shall use table C–2 exclusively in determining light-duty vehicle and light-duty truck credit values for vehicles in the subject area or areas. Table C–2.1 applies to paragraphs (b)(1) (i) and (ii) of this section; table C–2.2 applies to paragraph (b)(1)(iii) of this section.

(3) For heavy-duty vehicles, credit values shall be determined in accordance with tables C–3.1 or C–3.2, as appropriate. Table C–3.1 applies to paragraphs (b)(1 (i) and (ii) of this section; and table C–3.2 applies to paragraph (b)(1)(iii) of this section.

(4) Credit values shall be rounded to two decimal places in accordance with ASTM E29–67.

(5) Vehicles of greater than 26,000 pounds GVWR that are not single unit trucks may not generate credits.

(6) Credits generated by the purchase of light-duty vehicles or light-duty trucks shall be designated at the time of issuance as light-duty credits. Credits generated by the purchase of heavy-duty vehicles shall be designated at the time of issuance as heavy-duty credits. Credits generated by the purchase of light heavy-duty vehicles shall be further designated as having been generated by the purchase of light heavy-duty vehicles.

(c) *Credit use.* (1) All credits generated in accordance with these provisions may be freely traded or banked for later use, subject to the provisions contained in this Subpart, without discount or depreciation of such credits.

(2) Credits may be traded within the boundaries of the applicable nonattainment area, notwithstanding whether or not these boundaries encompass more than one state.

(3) Credits may not be traded between nonattainment areas, even if a state contains more than one nonattainment area. Credits issued as a result of purchases in one nonattainment area may not be used to demonstrate compliance in another nonattainment area.

(4)(i) Credits generated by the purchase of light-duty vehicles and light-duty trucks of 8,500 pounds GVWR or less may be used to demonstrate compliance with the requirements applicable to either light-duty vehicles or light-duty trucks.

(ii) Credits generated by the purchase of vehicles of more than 8,500 pounds GVWR may not be used to demonstrate compliance with the requirements for vehicles weighing 8,500 pounds GVWR or less.

(iii) Credits generated by the purchase of vehicles of 8,500 pounds GVWR or less may not be used to demonstrate compliance with requirements for vehicles of more than 8,500 pounds GVWR.

(5) A fleet owner or operator desiring to demonstrate full or partial compliance with the fleet program requirements by the redemption of credits, shall surrender sufficient credits, as established in tables C.1–3, C.2–3, or C.3–3, as appropriate.

(d) *Program administration.* Each affected state shall promulgate regulations as necessary for implementing this requirement. The state shall submit a SIP revision to the Administrator stipulating the specific mechanism by which the credit program is to be administered and enforced.

(1) The SIP revision shall include provisions for issuance of credits to fleet operators who voluntarily purchase vehicles certified to meet clean fuel standards during any period subsequent to the approval of the SIP revision but prior to the effective date for commencement of the fleet credit program, provided that all other requirements applicable to such purchases are also met. The effective date for program commencement shall be established by each state in the SIP revisions, but shall not be later than the date called for in section 246 of the Clean Air Act.

(2) The SIP revision may provide credits to fleet owners or operators who are not required by law to participate in the fleet program.

(3) The SIP revision shall provide that all requirements applied to vehicles purchased to demonstrate compliance with the fleet program, such as requirements to use clean alternative fuel, also apply to credit-generating vehicles.

§ 88.305 Exemptions from transportation control measures.

(a) *Exemptions for vehicles in affected fleets.* All LEVs, ULEVs and ZEVs in fleets required by law to participate in the fleet program and in any other fleets permitted to receive credits under § 88.304–95(d)(2) shall be exempted from transportation control measures existing for air quality reasons which restrict vehicle usage based

primarily on temporal considerations, e.g., time-of-day or day-of-week restrictions. Such exemptions shall not include exemptions from transportation control measures for which such exemptions would create a clear and direct safety hazard.

(b) *Transferability of exemptions.* Exemptions provided in paragraph (a) of this section are not effective outside of the areas in which fleet programs are established by each state. Such exemptions shall remain effective only while the subject vehicle remains in compliance with applicable performance standards and other vehicle requirements. Such exemptions may not be transferred between vehicles within the same fleet. Such exemptions may not be sold or traded.

§ 88.306 Applicability to covered federal fleets.

(a) *Compliance by Federal vehicles.* Fleets owned or operated by any agency, department, or instrumentality of the United States shall comply with the applicable state regulations established in the SIP revisions.

(1) Federal agencies shall obtain clean fuel vehicles from original equipment manufacturers to the extent possible.

(2) The Secretary of Defense may exempt any vehicles from the provisions of any clean fuel fleet program established in the SIP revisions, if he certifies to the Administrator in writing that inclusion of the specified vehicles in such programs could have an adverse impact on national security. The Secretary of Defense shall also provide a copy of this certification to the state agency administering the fleet program in the state in which the specified vehicles reside.

(b) *Clean alternative fuel availability.* Federal facilities supplying clean alternative fuel to Federal fleet vehicles must also offer such fuel for sale to the general public during the refueling facility's normal business hours, provided that such operating hours must be a minimum of 8 hours duration during each business day. Federal facilities may be exempted from the provisions of this requirement, provided—

(1) Clean alternative fuel of the type(s) used by the Federal fleet is available from a commercial source located within a radius of 5 miles of the main entrance to the Federal facility; or

(2) The Secretary of Defense certifies to the Administrator, in writing, that the facility should be exempt from this requirement for national security reasons. The Secretary of Defense shall also provide a copy of this certification to the state agency administering the fleet program in the state in which the specified vehicles reside.

Tables to Subpart C of Part 88

TABLE C–1.—FLEET CREDIT TABLES BASED ON REDUCTION IN NMOG VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE C–1.1.—CREDIT GENERATION: BUYING MORE VEHICLES THAN REQUIRED

NMOG	LDV <6000 GVWR <3750 LVW	LDT <6000 GVWR <3750 LVW	LDT <6000 GVWR <3750 LVW <5750 LVW	LDT >6000 GVWR <3750 TW	LDT >6000 GVWR >3750 TW <5750 TW	LDT >6000 GVWR >5750 TW
LEV	1.00	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.20	1.54	1.00	1.26	1.56
ZEV	1.43	1.43	1.83	1.43	1.83	2.23

TABLE C–1.2.—BUYING A ULEV OR ZEV TO MEET THE MANDATE

NMOG	LDV <6000 GVWR <3750 LVW	LDT <6000 GVWR <3750 LVW	LDT <6000 GVWR >3750 LVW <5750 LVW	LDT >6000 GVWR <3750 TW	LDT >6000 GVWR >3750 TW <5750 TW	LDT >6000 GVWR >5750 TW
LEV	0.00	0.00	0.00	0.00	0.00	0.00
ULEV	0.20	0.20	0.28	0.29	0.34	0.45
ZEV	0.43	0.43	0.57	0.71	0.91	1.11

TABLE C–1.3.—CREDIT NEED

NMOG	LDV <6000 GVWR <3750 LVW	LDT <6000 GVWR <3750 LVW	LDT <6000 GVWR >3750 LVW <5750 LVW	LDT >6000 GVWR <3750 TW	LDT >6000 GVWR >3750 TW <5750 TW	LDT >6000 GVWR >5750 TW
LEV	1.00	1.00	1.26	0.71	0.91	1.11

TABLE C–2.—FLEET CREDIT TABLES BASED ON REDUCTION IN NMOG + NO_x VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE C–2.1.—CREDIT GENERATION: BUYING MORE VEHICLES THAN REQUIRED

NMOG + NO_x	LDV <6000 GVWR <3750 LVW	LDT <6000 GVWR <3750 LVW	LDT <6000 GVWR >3750 LVW <5750 LVW	LDT >6000 GVWR <3750 TW	LDT >6000 GVWR >3750 TW <5750 TW	LDT >6000 GVWR >5750 TW
LEV	1.00	1.00	1.39	0.33	0.43	0.52
ULEV	1.09	1.09	1.52	1.00	1.39	2.06
ZEV	1.73	1.73	2.72	1.73	2.72	3.97

TABLE C–2.2.BUYING A ULEV OR ZEV TO MEET THE MANDATE

NMOG + NO_x	LDV <6000 GVWR <3750 LVW	LDT <6000 GVWR <3750 LVW	LDT <6000 GVWR >3750 LVW <5750 LVW	LDT >6000 GVWR <3750 TW	LDT >6000 GVWR >3750 TW <5750 TW	LDT >6000 GVWR >5750 TW
LEV	0.00	0.00	0.00	0.00	0.00	0.00
ULEV	0.09	0.09	0.13	0.67	0.96	1.54
ZEV	0.73	0.73	1.34	1.40	2.29	3.46

TABLE C–2.3.—CREDIT NEED

NMOG + NO_x	LDV <6000 GVWR <3750 LVW	LDT <6000 GVWR <3750 LVW	LDT <6000 GVWR >3750 LVW <5750 LVW	LDT >6000 GVWR <3750 TW	LDT >6000 GVWR >3750 TW <5750 TW	LDT >6000 GVWR >5750 TW
LEV	1.00	1.00	1.39	0.33	0.43	0.52

TABLE C–3.—FLEET CREDIT TABLES VEHICLE EQUIVALENTS FOR HEAVY-DUTY VEHICLES

TABLE C–3.1—CREDIT GENERATION: BUYING MORE VEHICLES THAN REQUIRED

	Light HDV	Medium HDV	Single unit heavy HDV
LEV	1.00	1.00	1.00
ULEV	1.30	1.30	1.30
ZEV	2.47	2.47	2.47

TABLE C–3.2.—BUYING A ULEV OR A ZEV TO MEET THE MANDATE

	Light HDV	Medium HDV
LEV	0.00	0.00
ULEV	0.30	0.30
ZEV	1.47	1.47

TABLE C–3.3.—CREDIT NEED

	Light HDV	Medium HDV
LEV	1.00	[1] 1.00

[1] Any credits designated as being generated by the purchase of a light HDV shall be multiplied by xx (prorating factor less than 1.0, to be determined) in assessing fulfillment of this credit need.

[FR Doc. 91–23603 Filed 10–2–91; 8:45 am]

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federal register

Thursday
October 3, 1991

Part VI

Department of Education

National Assessment of Educational Progress Data Reporting; Notice

DEPARTMENT OF EDUCATION

National Assessment of Educational Progress Data Reporting Program

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year 1992.

SUMMARY: The Secretary announces priorities for fiscal year (FY) 1992 under the National Assessment of Educational Progress (NAEP) for a Data Reporting Program. The Secretary takes this action to ensure a thorough and detailed investigation of the data from the 1990 NAEP and the 1991 NAEP High School Transcript Study. The priorities are announced in order to expand the available information about factors related to the academic achievement of U.S. children in public and private schools.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Alex Sedlacek, U.S. Department of Education, 555 New Jersey Avenue, NW., room 306D, Washington, DC 20208–5653. Telephone: 202–219–1734. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: NAEP is a primary indicator of the level of U.S. Students' academic achievement. Since 1969, NAEP has been assessing what American students know and can do in a variety of curriculum areas and plotting their progress across time. To provide context for the achievement results, NAEP also collects demographic, curricular and institutional background information from students, teachers and school administrators. The 1991 High School Transcript Study (Transcript Study) collected transcript data on a sample of the twelfth graders who participated in the 1990 NAEP. The Transcript Study collected data on the characteristics of students and the characteristics of the high school courses the students took.

The contract with the Educational Testing Service to design and administer the 1990 NAEP includes provisions for the preparation and dissemination of a series of reports on the NAEP data. Under the final priorities, the Secretary will encourage other educational researchers to study the NAEP and Transcript Study data and prepare reports on specific topics in order to expand the available information about the teacher background variables, instructional variables, school environment variables and student background variables that relate to academic achievement.

The Secretary will award analysis grants under the final priorities in order to encourage a broader range of educational researchers to work with the NAEP and Transcript Study data, and to foster the development of new approaches to analyzing and reporting on these data sets.

The final priorities are intended to ensure that competitive grant projects meet the standards required for accurate statistical analysis of the complex data produced by NAEP and the Transcript Study.

Please note that there are no program regulations for this competition; therefore, in evaluating applications, the Secretary will use the selection criteria in the Education Department General Administrative Regulations (34 CFR 75.210).

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is being published in this issue of the **Federal Register.**

Public Comment

On June 12, 1991 the Secretary published a notice of proposed priorities for this program in the **Federal Register** (56 FR 27152). In the notice of proposed priorities, the Secretary invited comments on the proposed priorities. The Secretary did not receive any comments. However, the Secretary has reviewed the priorities since publication of the notice of proposed priorities and has made changes to Competitive Priority 2 and the invitational priorities. An analysis of the changes in the priorities since publication of the notice of proposed priorities follows.

Analysis of Changes

Competitive Priority 2—Development of Analytic Software Applicable to NAEP Data.

Discussion: As originally stated, this priority did not point out the purpose behind the Secretary's interest in the development of analytic software that is appropriate to the NAEP data. One of the Secretary's goals is to make NAEP data more accessible to the public and to have the results of analytic studies conducted on the NAEP data broadly disseminated. This priority is intended to serve the goal of wider dissemination of NAEP results by making user-friendly NAEP software available.

Change: The revised priority explicitly states that the purpose of Competitive Priority 2 is to broaden the dissemination of NAEP data and NAEP results.

Invitational Priorities

Discussion: The original version of the Invitational Priorities did not explicitly state that the Secretary wishes to encourage investigations of what the NAEP data tell us about the differences between public and private schools. This is an important area of inquiry and the Secretary believes that the grant program will be more fruitful if projects address issues related to public and private schools.

Changes: The first of the revised Invitational Priorities specifically encourages applications that propose to study data related to both public and private schools.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Analysis of Data From the 1990 NAEP and the 1991 NAEP High School Transcript Study

Applications proposing to conduct analyses of the data from the 1990 NAEP authorized by section 406(i) of GEPA, and the 1991 NAEP High School Transcript Study. Each analysis project must be designed to increase the information available to educational policymakers in areas where student performance might be affected by institutional change. Each project must include the publication and dissemination of the results of the data analysis, after completing the National Center for Education Statistics (NCES) peer review procedure.

Each proposed analysis must—(1) Account for the sampling error associated with the multi-stage sampling plan of NAEP when estimating the precision of all statistical parameters; and

(2) Account for the measurement error in the multiply-imputed NAEP proficiency scores when estimating statistical parameters and their standard errors.

Competitive Preference Priorities

Under 34 CFR 75.105(c)(2)(i) the Secretary gives preference within the

absolute priority to applications that meet one or more of the following competitive priorities. The number of points the Secretary awards to an application that meets a competitive priority in a particularly effective way is indicated in parentheses next to the title of the priority. These points would be in addition to any points the application earns under the selection criteria.

Competitive Priority 1—Innovative Approaches to Analysis of the 1990 NAEP and 1991 Transcript Study Data. (Up to 8 points) Analysis projects that develop new approaches to analyzing and reporting the information contained in the NAEP and Transcript Study data, or appropriately apply state-of-the-art statistical procedures such as loglinear modeling, covariance structure analysis, and hierarchical linear modeling.

Competitive Priority 2—Development of Analytic Software Applicable to NAEP Data. (Up to 7 points) Analysis projects that include the development of statistical software that allows more advanced analytic techniques to be readily applied to NAEP data and thereby promotes a wider dissemination of NAEP data and the results of analyses of NAEP data.

Invitational Priorities

Within the absolute and competitive priorities specified in this notice, the Secretary establishes the following invitational priorities. However, applications that meet these invitational priorities will not receive absolute or competitive preference over other applications.

Projects that—(1) Address the instructional factors, family background factors, school characteristics (including type of school: public or private), and teacher qualities that the educational research literature suggests are correlates of academic performance;

(2) Do not overlap with the data analysis projects that will be listed in the application package, that are already being done by the NAEP contractor; and

(3) Use research done on statistical effect size to ensure that inferences made about project findings have practical as well as statistical significance.

Program Authority: 20 U.S.C. 1221e–1(i).

(Catalog of Federal Domestic Assistance Number 84.999B, National Assessment of Educational Progress Data Reporting Program)

Dated: August 29, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–23854 Filed 10–2–91; 8:45 am]

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federal register

Thursday
October 3. 1991

Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Tribal-State Compact Between the Tulalip Tribes of Washington and the State of Washington; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Tribal-State Compact Between the Tulalip Tribes of Washington and the State of Washington

AGENCY: Bureau of Indian Affairs; Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact between the Tulalip Tribes of Washington and the state of Washington executed on August 2, 1991.

DATES: This action is effective on October 3, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS 4603 MIB, 1849 "C" Street, NW., Washington, DC 20249.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7445.

Dated: September 25, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–23819 Filed 10–2–91; 8:45 am]

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federal register

Thursday
October 3, 1991

Part VIII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Tribal-State Compacts, Prairie Island Indian Community et al.; Notice

DEPARTMENT OF THE INTERIOR

Indian Gaming; Tribal-State Compacts; Prairie Island Indian Community et al.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved Tribal-State Compacts between the following tribes and states: The Prairie Island Indian Community and the State of Minnesota executed on May 13, 1991; the Lower Sioux Indian Community and the State of Minnesota executed on May 8, 1991; the White Earth Band of Chippewa and the State of Minnesota executed on May 24, 1991; the Leech Lake Band of Chippewa Indians and the State of Minnesota executed on May 8, 1991; the Fond du Lac Band of Lake Superior Chippewa and the State of Minnesota executed on May 21, 1991; the Bois Forte Band of Chippewa and the State of Minnesota executed on May 10, 1991; the Grand Portage Band of Chippewa and the State of Minnesota executed on May 13, 1991; the Mille Lac Band of Chippewa and the State of Minnesota executed on May 9, 1991; the Upper Sioux Indian Community and the State of Minnesota executed on May 13, 1991; the Red Lake Band of Chippewa and the State of Minnesota executed on June 11, 1991; and the Shakopee Mdewakanton Sioux Community and the State of Minnesota executed on June 10, 1991.

DATES: This action is effective on October 3, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS 4603 MIB, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7445.

Dated: September 25, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–23818 Filed 10–2–91; 8:45 am]

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federal register

Thursday
October 3. 1991

Part IX

Office of Management and Budget

Final Revisions to Circular A-21, "Cost Principles for Educational Institutions"; Notice

OFFICE OF MANAGEMENT AND BUDGET

Revisions to Circular A–21, "Cost Principles for Educational Institutions"

AGENCY: Office of Management and Budget.

ACTION: Final Revision to Circular A–21, "Cost Principles for Educational Institutions."

SUMMARY: This revision implements the Office of Management and Budget's (OMB's) previously stated intention to revise Circular A–21 so as to exclude certain specified costs from reimbursements paid to colleges and universities under Federal research grants and to limit reimbursement for administrative costs.

OMB Director Darman said on April 22, 1991, "Recent information shows abuse in reimbursements claimed by universities for indirect costs supporting Government funded research. This requires additional guidelines to clarify policy and stop the abuse."

This revision represents the initial step in a broader Administration effort to reform Circular A–21 more comprehensively.

DATES: Some of the provisions published in this revision merely restate, emphasize or clarify existing provisions of the Circular or law. Those provisions (such as the inclusion of interest as a part of Federal recoveries in accordance with existing agency regulations) are effective immediately. Unchanged provisions (such as the unallowability of the costs of legal, accounting, and consulting services, and related costs, incurred in prosecuting claims against the Federal Government) remain in force. Revised provisions (such as the unallowability of the costs of defense against Federal Government claims) take effect on the dates specified.

FOR FURTHER INFORMATION CONTACT: Jack Sheehan, Financial Management Division, 10235 NEOB, OMB, Washington, DC 20503 (telephone: 202–395–3050).

SUPPLEMENTARY INFORMATION:

A. Background

Notices were published in the **Federal Register** on May 15, 1991 (56 FR 22618) and June 27, 1991 (56 FR 29530) requesting comments on proposed revisions to OMB Circular A–21, "Cost Principles for Educational Institutions."

Interested parties were invited to submit comments. Almost 300 comments were received from Federal agencies, universities, professional organizations and others. All comments were considered in developing this final revision.

The following section presents a summary of the major comments, grouped by subject, and a response to each comment, including a description of changes made as a result of the comment. Other changes have been made to increase clarity and readability.

B. Comments and Responses

Research Allocations

Comment: A number of commenters noted that this proposed revision was not a change in the existing policy of Circular A–21 and some questioned the need for any revision in view of this.

Response: The revision is intended to highlight the existing prohibition against charging Federal sponsors for any under-recovery of indirect costs arising from the conduct of research for any non-Federal sponsor.

Comment: A number of commenters misunderstood the proposed revision to prohibit cost sharing by universities conducting research for non-Federal entities especially State and local governments and non-profit organizations.

Response: The revision does not prohibit cost sharing by universities. However, no under-recovery of costs may be charged to Federal sponsors.

Collection of Unallowable Costs

Comment: A number of commenters said that the proposed wording concerning interest was unclear. Some assumed interest would be charged from the date an unallowable cost was incurred.

Response: The wording of this section has been changed slightly. The reference to "interest chargeable in accordance with applicable Federal agency regulations" is intended to confirm existing requirements of law.

The Debt Collection Act requires the charging of interest from the date a Federal agency provides notice of a claim. However, with respect to Department of Defense contracts awarded after February 26, 1987, 10 U.S.C. 2324 (a) through (d) requires the Department of Defense to assess a penalty equal to interest on certain unallowable indirect costs back to the date the costs were reimbursed by the Federal Government.

Comment: A number of commenters objected to the provision that unallowable costs be paid to the Federal Government. Instead, they suggested that a future indirect cost rate be adjusted for the amount of unallowable costs.

Response: The Circular's provision for allowing adjustments of future indirect cost rates is intended only to permit adjustments relating to the under- or over-recovery of allowable costs.

Adjustment of Indirect Cost Rates

Comment: There were numerous comments concerning whether offsets could be used rather than refunds if the original proposal by a university was higher than the rate ultimately negotiated.

Response: An offset would be appropriate only to the extent that a general reduction, not identifiable to specific issues, was made. Additionally, a separate refund would not be necessary for any unallowable costs that were clearly eliminated during the rate negotiation process.

Comment: There were numerous comments concerning whether offsets could be used rather than refunds if the university could document additional costs not originally claimed.

Response: No. This provision is intended to correct improper (past year) proposals and not reopen prior years' rates to renegotiation.

Comment: There were a number of comments objecting to subsection (d) where unallowable costs included in each year's rate would be assumed to be the same as the amount in the base year proposal used to establish the rate.

Response: The assumption that the same amount of unallowable costs found in the base year, on which subsequent years rates were determined, is a valid assumption. The purpose is to correct an improper rate setting proposal which was used to establish the rates for several years.

Comment: One commenter pointed out that, for some multi-year agreements, it would be more appropriate to use the proportion rather than the amount of unallowable costs contained in a base year proposal to determine the amount of unallowable costs to be adjusted.

Response: The language has been revised to allow the cognizant agency to use whichever method of computation is appropriate.

Comment: One commenter recommended that subsection (9) of section C be amended to include "unallocable costs" in the category of costs deemed unallowable and for which adjustments to previously negotiated rates should be made. The commenter indicated that unallowable costs are costs which are

not specifically addressed in Section J and not prohibited by law, yet they are generally costs that are clearly unallowable, such as the costs of yachts, intercollegiate athletics, etc."

Response: The provision has been amended to address the suggested change.

Limitation on Administrative Costs

Comment: Most commenters objected to the imposition of a limitation on the amount of administrative costs which could be charged to Federal awards.

Response: No change has been made.

Comment: Most commenters also objected to the timing of the limitation. They pointed out that most institutions had already negotiated permanent rates for fiscal year 1992 and, in many cases, for additional future periods. They requested sufficient lead time to enable them to plan for the financial impact of the cap.

Response: The proposal was revised to delay the effective date of the cap until the start of each institution's next fiscal year.

Comment: Many commenters objected to the amendment of predetermined rates already established by the cognizant agencies. They pointed out that many agreements would not expire for several years and it would be unreasonable to hold them to such reduced rates if they could document other valid costs which could be substituted for the administrative costs removed. Furthermore, their negotiation priorities might have been different if they had known of the impending limitation.

Response: The proposal has been changed to allow the renegotiation of rates amended by the cognizant agency. However, no renegotiated rate may exceed the rate which would have been in effect if the agreement had remained in effect, nor may the administrative portion of any renegotiated rate exceed the limitation established by this revision of the Circular.

Comment: Many commenters objected to the proposed restrictions on their managerial prerogatives to make accounting system changes.

Response: The proposed restriction would only affect those changes which would have an adverse effect on Federal Government costs by diluting or avoiding the effect of the limitation on administrative cost reimbursement. The proposal also contains a provision allowing cognizant agencies to approve some modifications, despite such adverse effect, that allow institutions to adopt practices followed by a substantial majority of other institutions.

Comment: Many commenters made alternate proposals to extend the reductions to a broader portion of the rate, to spread the reductions over a larger universe of institutions, or to exempt a variety of specific types of costs from the limitation.

Response: No changes were made. The limitation is intended to place a reasonable ceiling level on all administrative costs.

Depreciation and Use Allowance Payments

Comment: Most commenters objected to the establishment of a dedicated facilities fund on the grounds that: (1) For the most part, reimbursements from the Federal Government are for facilities already acquired and paid for by the institutions; (2) the institutions currently expend more for research facilities than the reimbursements received; (3) the costs to administer such a fund would be excessive; and, (4) the requirement to actually set aside funds in a separate account is an unwarranted intrusion on their management prerogatives. Numerous commenters suggested that the objective of the proposal could be achieved by obtaining a statement of assurance that current expenditures for buildings and equipment exceeded the Federal reimbursements for depreciation and use allowance.

Response: The proposal has been revised to incorporate the suggested alternative. Institutions will be required to provide periodic assurances that Federal depreciation and use allowance reimbursements have been expended or reserved, but not physically set aside, for use within the next five years to acquire or improve research facilities.

Comment: A number of commenters misunderstood the proposal and seemed to believe that Federal reimbursements could only be used for new buildings or equipment but not to retire debt on, or make repairs or renovations to, existing facilities.

Response: There was no intention to restrict the use of Federal reimbursements as suggested by these respondents.

Comment: Several commenters questioned how the provisions should be applied for Federal awards which limit the reimbursement of indirect costs, such as the 8 percent rate used on HHS research training awards and the 14 percent cap on USDA grants.

Response: The provision has been clarified by making it applicable only to Federal agreements that provide indirect costs at a full rate established by the cognizant Federal agency.

Comment: One commenter pointed out that interest expense and depreciation and use allowances for research facilities are both reimbursed as part of the indirect cost rate by the Federal Government. Therefore, the depreciation and use allowance reimbursements should be available only for the payment of principal, but not interest, on facility debts.

Response: The provision has been clarified to reflect the suggested change.

Advertising and Public Relations Costs

Comment: Several commenters pointed out that the proposed language disallowing "special events such as conventions and trade shows" was unclear and might preclude appropriate charges to Federal awards for directly relevant scientific conferences, symposia, or meetings of professional societies.

Response: The phrase "special events such as conventions and trade shows" has been replaced by a more representative example of university activties, namely "convocations or other events related to instruction or other institutional activities." The activities such as "symposia, etc" are covered under section 3.28.c.

Costs Related to Legal and Other Proceedings

Comment: Several commenters suggested that the proposed A–21 coverage conform with the comparable language contained in the Federal Acquisition Regulation (FAR) cost principles for commercial organizations at FAR 31.205–47, Costs related to legal and other proceedings.

Response: Proposed revisions J.11 a. through e. were predicated on the statutory language contained in Section 8, Limitations On Allowability Of Costs Incurred By Federal Contractors In Certain Proceedings, of Public Law 100–700, Major Fraud Act of 1988, November 19, 1988, and the regulatory provisions established in FAR 31.205–47(a) through (e). Proposed paragraphs f. through i. correlate with FAR 31.205–47, paragraphs (f)(4), (f)(1), (f)(6) and (g), respectively. The slight language differences between the FAR and proposed Circular A–21 coverage were due to minor editorial and regulatory style preferences. No substantive differences between the FAR and this Circular are intended. As a result of the specific comments provided, proposed paragraphs a., b.,

d., e., and i. were revised for greater conformity with the comparable FAR language.

Comment: Several commenters objected to the proposed 80 percent limitation on reimbursement when the institution is found innocent, and suggested that the proposed revisions were not clear.

Response: The proposed revisions were retained. As stated herein, the proposed revisions follow the requirements of Public Law 100–700.

Comment: Some commenters recommended deletion of proposed paragraph g. which prohibits reimbursement for costs incurred in connection with the defense or prosecution of claims or appeals with the Federal Government.

Response: This proposed revision was retained. The costs of legal, accounting and consulting services and related costs incurred in connection with the prosecution of claims against the Federal Government have traditionally been unallowable (see Section J. 26. c. of the existing Circular). It is also Federal policy that the costs of defense against a Federal Government claim are unallowable, either as a direct or indirect charge (e.g., FAR 31.205–47(f)(1)).

Comment: One commenter stated that proposed paragraphs b. and g. appear to conflict.

Response: The two paragraphs do not conflict. Paragraph g. relates to claims that may be initiated by either party to resolve disputes under the terms and conditions contained in Federal awards. Such actions do not equate with the actions and resulting dispositions specified in Public Law 100–700, i.e., the actions listed under paragraph b.

Comment: One commenter questioned whether paragraph g. applies to both administrative and judicial proceedings.

Response: Paragraph g. does apply to both administrative and judicial proceedings.

Comment: One commenter stated that patent infringement costs should be allowable.

Response: No change was made. Patent infringement costs are not currently allowable. Proposed paragraph h. is not new (see J. 26. c. of the existing Circular).

Comment: Several commenters objected to paragraph i. which requires separate accounting for potentially unallowable litigation costs. They believed that this imposes an expensive administrative cost requirement.

Response: This revision was retained. The referenced litigation costs are potentially unallowable and should be separately identified to ensure such costs are not improperly claimed and reimbursed under federally-sponsored agreements. Absent separate identification at the time of occurrence, it is difficult to understand how institutions could identify and exclude such costs from their reimbursement claims on an after-the-fact basis.

Comment: Several commenters suggested that all of the FAR cost principles provisions be incorporated in their entirety even though some sections may not appear to be pertinent to universities.

Response: No change was made. The need for incorporating the provisions contained in FAR 31.205–47(f) (2), (3), (5), and (7) is not readily apparent. Accordingly, those provisions are not being incorporated at this time.

Employee Morale, Health, and Welfare Costs and Credits

Comment: Several commenters asked whether certain costs of employee morale, health and welfare programs would be unallowable if they were: (1) Entertainment, (2) donations, or (3) goods and services.

Response: No change was made. Charges made to established programs for employee morale, health and welfare (including recreation activities, nominal gifts at retirement, etc.) are allowable. Charges made for entertainment, gifts, or goods or services for personal use, not part of such program, are unallowable.

Insurance Against Defects

Comment: Several commenters suggested the word "commercial" be deleted from this proposed section to ensure the prohibition covers cases involving self-insurance.

Response: The wording was so amended.

Comment: Two commenters sought clarification of the prohibition on reimbursement of the costs of insurance against defects. One noted the intent is clearly directed to product liability insurance, while casualty insurance should be allowable. One commenter sought clarification concerning whether malpractice insurance was covered.

Response: Casualty and malpractice insurance are not covered by the prohibition.

Lobbying

Comment: Several commenters said this section was not detailed and specific enough.

Response: Detailed guidance is provided in new sections J.17 and J.24.

Salary Limits

Comment: Numerous commenters objected to the proposal to limit salary amounts charged to sponsored agreements.

Response: OMB concurs. The proposal is not included in this revision. However, statutory limitations continue to apply.

Severance Pay

Comment: Several commenters said they had multiple union contracts which in effect give a university different severance pay policies. In their opinion, the proposal seemed to imply that a single policy was required.

Response: Under this provision, an institution's normal severance pay policy can include several severance pay plans which arise from multiple union contracts.

Comment: One commenter said this revision might interfere with retirement incentives.

Response: This section deals with severance, i.e., dismissal. It does not cover retirement programs.

Travel Costs

Comment: Several commenters recommended that the proposed airfare cost limitations, in paragraph c., be conformed to FAR 31.205.46(d), which generally prohibits the cost of first class airfare by limiting allowable airfare costs to the lowest customary standard, coach, or equivalent airfare.

Response: The proposed A–21 revisions were predicated upon FAR 31.205–46(d). An additional revision was added to clarify that allowable airfare costs are limited to the lowest available airfare, e.g., discount airfares. In view of the comments received, the proposed language was revised for greater consistency with the referenced FAR language, but the proposed limitations requiring use of the lowest available airfare were retained. In accordance with sound financial management concepts, educational institutions are expected to implement airfare travel cost policies that require employees performing official business travel to use the lowest available commercial airfare consistent with prudent travel cost management.

Trustees

Comment: One commenter asked whether the reference to "trustees" included boards, regents, visitors, etc.

and questioned whether the proposal applied to trustees at the institution level or also included trustees at the college level.

Response: The term "trustee" is being used generically and includes boards, regents, visitors, etc. The prohibition applies to all levels of an institution.

Comment: One commenter said there may be confusion where a trustee is also a member of management.

Response: When traveling as a trustee, the cost is unallowable.

Certification

Comment: Several commenters recommended changes to the proposed certification.

Response: The certification parallels the Department of Defense (DOD) form currently required for universities administering DOD contracts. OMB's objective is consistency with the DOD provisions.

Comment: Several commenters wanted the "penalty of perjury" phrase removed.

Response: The penalty of perjury declaration is to remind the signer of the importance of the certification and the need to ensure that it accurately states his/her actual knowledge and belief.

Tom Stack,

Acting Director, Office of Federal Financial Management.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A-21, Revised Transmittal Memorandum No. 4

October 1, 1991

To the Heads of Executive Departments and Establishments.

Subject: Cost Principles for Educational Institutions.

This transmittal memorandum revises OMB Circular No. A-21, "Cost Principles for Educational Institutions." The revision excludes certain specified costs from reimbursements paid to colleges and universities receiving Federal awards and places a limit on the amount of reimbursable administrative costs. The revision also requires a certification to accompany each indirect cost proposal.

Effective Date. The revisions to the Circular are effective immediately. They will be implemented as follows:

—For costs charged directly to sponsored agreements, this revision shall be applied to all agreements awarded or amended (including continuation and renewal awards) on or after October 1, 1991.

—For costs charged indirectly, this revision shall be applicable on October 1, 1991. Implementation with respect to existing indirect cost rates may be accomplished by adjustments to future negotiated rates.

—The certifications with respect to unallowable costs shall apply to all indirect cost proposals submitted on or after October 1, 1991.

—For the limitation on administrative costs, this revision shall apply to all agreements awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991.

Richard Darman,

Director.

The following revisions are made to sections C, G, J, and K of the Attachment to Circular A-21:

1. A new subsection c is added to section C.4, *Allocable costs.*

c. Any costs allocable to activities sponsored by industry, foreign governments or other sponsors may not be shifted to federally-sponsored agreements.

2. The following new subsection 8 is added to section C:

8. *Collection of unallowable costs.* Costs specifically identified as unallowable in Section J and charged to the government, either directly or indirectly, will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

3. A new subsection 9 is added to section C.

9. *Adjustment of previously negotiated indirect cost rates containing unallowable costs.* Negotiated indirect cost rates based on a proposal later found to have included costs that (a) are unallowable as specified by (i) law or regulation, (ii) section J of this Circular, (iii) terms and conditions of sponsored agreements or (b) are unallowable because they are clearly not allocable to sponsored agreements, shall be adjusted, or a refund shall be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

a. For rates covering a future fiscal year of the institution, the unallowable costs will be removed from the indirect cost pools and the rates appropriately adjusted.

b. For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

c. For rates covering the current period, either a rate adjustment or a refund, as described in subsections a and b, shall be required by the cognizant agency. The choice of method shall be at the discretion of the cognizant agency, based on its judgment as to which method would be most practical.

d. The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

4. Section G.1.a is amended by renumbering the existing text G.1.a.(1) and G.1.a.(2) and adding the new subsection G.1.a.(3). This section will now read as follows:

G. *Determination and application of indirect cost rate or rates.*

1. *Indirect cost pools.*

a. (1) Subject to subsection b, the separate categories of indirect costs allocated to each major function of the institution as prescribed in Section F shall be aggregated and treated as a common pool for that function. The amount in each pool shall be divided by the distribution base described in section G.2 to arrive at a single indirect cost rate for each function.

(2) The rate for each function is used to distribute indirect costs to individual sponsored agreements of that function. Since a common pool is established for each major function of the institution, a separate indirect cost rate would be established for each of the major functions described in section B.1 under which sponsored agreements are carried out.

(3) Each institution's indirect cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect cost pools, as described in sections E.2 and F.1 through F.7, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in section G.2) for each major function (organized research, instruction, etc., as described in section B.1) shall contain all the programs or activities which utilize the indirect costs allocated to that major function. At the time an indirect cost proposal is submitted to a Federal cognizant agency, each institution must describe

the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

5. A new section number 6 is added to section G.

6. *Limitation on reimbursement of administrative costs.*

a. Notwithstanding the provisions of G.1.a, the administrative costs charged to sponsored agreements awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, shall be limited to 26% of modified total direct costs (as defined in section G.2) for the total of General Administration and General Expenses, Departmental Administration and Sponsored Projects Administration (including their allocable share of depreciation and/or use allowances, operation and maintenance expenses, and fringe benefit costs as provided by sections F.3.a, f.4.a.(3), and F.5.a).

b. Existing indirect cost rates that affect institutions' fiscal years which begin on or after October 1, 1991, shall be unilaterally amended by the cognizant Federal agency to reflect the cost limitation in subsection a above.

c. Permanent rates established prior to this revision which have been amended in accordance with subsection b may be renegotiated. However, no such renegotiated rate may exceed the rate which would have been in effect if the agreement had remained in effect; nor may the administrative portion of any renegotiated rate exceed the limitation in subsection a.

c. Institutions should not change their accounting or cost allocation methods which were in effect on May 1, 1991, if the effect is to: (i) Change the charging of a particular type of cost from indirect to direct, or (ii) reclassify costs, or increase allocations, from the administrative pools identified in subsection a above to the other indirect cost pools or fringe benefits. Cognizant Federal agencies are authorized to permit changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

6. A new subsection 7 is added to section G.

7. *Individual rate components.* In order to satisfy the requirements of Section J.12.f and to provide mutually agreed upon information for management purposes, each indirect cost rate negotiation or determination shall include development of a rate for each indirect cost pool as well as the overall indirect cost rate.

7. Section J is renumbered as follows:

J. General Provisions for Selected Items of Cost

1. Advertising and public relations costs
2. Alcoholic beverages
3. Alumni activities
4. Bad debts
5. Civil defense costs
6. Commencement and convocation costs
7. Communication costs
8. Compensation for personal services
9. Contingency provisions
10. Deans of Faculty and graduate schools
11. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement
12. Depreciation and use allowances
13. Donated services and property
14. Employee morale, health, and welfare costs and credits
15. Entertainment costs
16. Equipment and other capital expenditures
17. Executive lobbying costs
18. Fines and penalties
19. Goods and services for personal use
20. Housing and personal living expenses
21. Insurance and indemnification
22. Interest, fund raising, and investment management costs
23. Labor relations costs
24. Lobbying
25. Losses on other sponsored agreements or contracts
26. Maintenance and repair costs
27. Material costs
28. Memberships, subscriptions, and professional activity costs
29. Patent costs
30. Plant security costs
31. Preagreement costs
32. Professional services costs
33. Profits and losses on disposition of plant equipment or other capital assets
34. Proposal costs
35. Rearrangement and alteration costs
36. Reconversion costs
37. Recruiting costs
38. Rental cost of buildings and equipment
39. Royalties and other costs for use of patents
40. Sabbatical leave costs
41. Scholarships and student aid costs
42. Selling and marketing
43. Severance pay
44. Specialized service facilities
45. Student activity costs
46. Taxes
47. Transportation costs
48. Travel costs
49. Termination costs applicable to sponsored agreements
50. Trustees

8. Section 1, *Advertising costs*, is retitled *Advertising and public relations costs* and revised to read as follows:

1. *Advertising and public relations costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the institution or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the institution of obligations arising under the sponsored agreement, when considered in conjunction with all other recruitment costs, as set forth in section J.37;

(2) The procurement of goods and services for the performance of the sponsored agreement;

(3) The disposal of scrap or surplus materials acquired in the performance of the sponsored agreement except when institutions are reimbursed for disposal costs at a predetermined amount in accordance with Attachment N, OMB Circular No. A–110; or

(4) Other specific purposes necessary to meet the requirements of the sponsored agreement.

d. The only allowable public relations costs are:

(1) Costs specifically required by sponsored agreements;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored agreements; or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notices of contract/grant awards, financial matters, etc.

e. Costs identified in c through d, if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in section D and E are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c, d, and e above;

(2) Costs of convocations or other events related to instruction or other institutional activities including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used

in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the institution.

9. The following new section 2 is added to section J:

2. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

10. The following new section 3 is added to section J:

3. *Alumni activities.* Costs incurred for, or in support of, alumni activities and similar services are unallowable.

11. Former section 6, *Compensation for personal services,* is renumbered 8 and revised as follows:

a. Former section J.15, *Fringe benefits,* is deleted and moved in its entirety to a new subsection f in this section and renumbered accordingly. A sentence is added at the end of the first subsection on rules for pension costs and now reads as follows:

f. *Fringe benefits.*

(3) Rules for pension plan costs are as follows:

(a) Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided: (i) Such policies meet the test of reasonableness, (ii) the methods of cost allocation are equitable for all activities, (iii) the amount of pension cost assigned to each fiscal year is determined in accordance with (b) below, and (iv) the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

b. A new subsection g is added to this section and reads as follows:

g. *Institution-furnished automobiles.*

That portion of the cost of institution-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees.

12. A new subsection f is added to former section J.9.

f. This section applies to the largest college and university recipients of Federal research and development funds as displayed in Exhibit A.

(1) Institutions shall expend currently, or reserve for expenditure within the next five years, the portion of indirect cost payments made for depreciation or use allowances under sponsored research agreements, consistent with section G.7, to acquire or improve research facilities. This provision applies only to Federal agreements which reimburse indirect costs at a full negotiated rate. These funds may only be used for: (a) liquidation of the principal of debts incurred to acquire assets that are used directly for organized research activities, or (b) payments to acquire, repair, renovate, or improve buildings or equipment directly used for organized research. For buildings or equipment not exclusively used for organized research activity, only appropriately proportionate amounts will be considered to have been expended for research facilities.

(2) An assurance that an amount equal to the Federal reimbursements has been appropriately expended or reserved to acquire or improve research facilities shall be submitted as part of each indirect cost proposal submitted to the cognizant Federal agency which is based on costs incurred on or after October 1, 1991. This assurance will cover the cumulative amounts of funds received and expended during the period beginning after the period covered by the previous assurance and ending with the fiscal year on which the proposal is based. The assurance shall also cover any amounts reserved from a prior period in which the funds received exceeded the amounts expended.

13. The following new section 11 is added to section J:

11. *Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.*

a. Definitions.

Conviction, as used herein, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

Costs, include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the institution to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

Fraud, as used herein, means (i) acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents, (ii) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (iii) acts which violate the False Claims Act, 31 U.S.C., sections 3729–3731, or the Anti-kickback Act, 41 U.S.C., sections 51 and 54.

Penalty, does not include restitution, reimbursement, or compensatory damages.

Proceeding, includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding (1) relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation, by the institution (including its agents and employees); and (2) results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of institutional liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the institution, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in (a), (b), (c) or (d) of b.(1) above.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in b(1) above.

c. If a proceeding referred to in paragraph b. is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the institution and the Federal Government, then the costs incurred by the institution in connection with such proceedings that are otherwise not allowable under paragraph b. may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in paragraph b is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the institution for

such proceedings, if such authorized official determines that the costs were incurred as a result of (1) a specific term or condition of a Federally sponsored agreement, or (2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in paragraph b., but which are not made unallowable by that paragraph, may be allowed by the Government but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored agreement;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under paragraph c. has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the institution in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100–700), including the cost of all relief necessary to make such employee whole, where the institution was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Government claims or appeals, or the prosecution of claims or appeals against the Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

i. Costs which may be unallowable under this section, including directly associated costs, shall be segregated and accounted for by the institution separately. During the pendency of any proceeding covered by paragraphs b. and f. of this section, the Government shall generally withhold payment of such costs. However, if in the best interests of the Government, the Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the institution to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

14. Former section 10, *Donated services and property,* is renumbered 13 and retitled *Donations and contributions.* The existing text is numbered subsection a and the following new subsection b is added.

b. Donations or contributions made by the institution, regardless of the recipient, are unallowable.

15. Former section 11, *Employee morale, health, and welfare costs and credits,* is renumbered 14 and revised to read as follows:

14. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, food services, employees' counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations. Losses resulting from operating food services are allowable only if the institution's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only (a) where the institution can demonstrate unusual circumstances, and (b) with the approval of the cognizant Federal agency.

16. Former section 12, *Entertainment costs,* is renumbered 15 and revised to read as follows:

15. *Entertainment costs.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

17. The following new section 17 is added to section J:

17. *Executive lobbying costs.* Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

18. Former section 16, *Insurance and indemnification,* is renumbered 21 and a new subsection f is added as follows:

f. *Insurance against defects.* Costs of insurance with respect to any costs incurred to correct defects in the institution's materials or workmanship are unallowable.

19. Former section 14, *Fines and penalties,* is renumbered 18 and revised to read as follows:

18. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with, Federal, State, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the sponsored agreement, or instructions in writing from the authorized official of the sponsoring agency authorizing in advance such payments.

20. A new section 19 is added to read as follows:

19. *Goods or services for personal use.* Costs of goods or services for personal use of the institution's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

21. A new section 20 is added to read as follows:

20. *Housing and personal living expenses.*

a. Costs of housing (e.g., depreciation maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the institution's officers are unallowable regardless of whether the cost is reported as taxable income to the employees.

b. The term officers includes current and past officers.

22. The following new section 24 is added to section J:

24. *Lobbying:* Reference is made to the common rule published at 55 FR 6736 (2/26/90) and the Office of Management and Budget governmentwide guidance and notice published at 54 FR 52306 (12/20/89) and 55 FR 24540 (6/15/90), respectively. In addition, the following restrictions shall apply:

a. Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence (i) the introduction of Federal or State legislation (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity) or (iii) any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence (i) the introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of subsection a:

(1) Technical and factual presentations on topics directly related to the performance of a grant, contract or other agreement (through hearing testimony, statements, or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing;

(2) Any lobbying made unallowable by section a.(3) to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the institution's authority to perform the grant, contract, or other agreement; or

(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. When an institution seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of subsection B.1.e.

d. Institutions shall submit as part of their annual indirect cost rate proposal a certification that the requirements and standards of this section have been complied with.

e. Institutions shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to this section J.24 complies with the requirements of this Circular.

f. Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this section during any particular calendar month when: (1) the employee engages in lobbying (as defined in subsections a and b above) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the institution has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) are met, institutions are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

g. Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section J.24. Any such advance resolutions shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Circular; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

23. Former section 22, *Memberships, subscriptions, and professional activity costs,* is renumbered 28 and revised as follows:

(a) In subsections a and b, delete the word "civic."

(b) Add the following new subsections d and e.

d. Costs of membership in any civic or community organization are unallowable.

e. Costs of membership in any country club or social or dining club or organization are unallowable.

24. Section 26, *Professional services costs,* is renumbered 32 and revised to read as follows:

a. Subsection a is changed to read:

a. Costs of professional and consulting services, including legal services rendered by the members of a particular profession who are not employees of the institution, are allowable, subject to J.32.b and section J.11, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. Retainer fees, to be allowable, must be reasonably supported by evidence of services rendered.

b. Subsection c is deleted.

25. The following new section 42 is added to section J:

42. *Selling and marketing.* Costs of selling and marketing any products or services of the institution (unless allowed under sections J.1.c or J.34) are unallowable.

26. Former section 37, *Severance pay,* is renumbered 43 and subsection d is added to read as follows:

d. Costs incurred in excess of the institution's normal severance pay policy applicable to all persons employed by the institution upon termination of employment are unallowable.

27. Former section 43, *Travel costs,* is renumbered 48 and revised to read as follows:

48. *Travel costs.*

a. *General.* Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in

lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, results in reasonable charges, and is in accordance with the institution's travel policy and practices consistently applied to all institutional travel activities.

b. *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the institution in its regular operations as a result of an institutional policy and the amounts claimed under sponsored agreements represent reasonable and allocable costs. In the absence of an acceptable institutional policy regarding travel costs, the rates and amounts established under subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter shall apply to sponsored agreements (41 U.S.C. 420).

c. *Commercial Air Travel.* Airfare costs in excess of the lowest available commercial discount airfare, Federal Government contract airfare (where authorized and available), or customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; greatly increase the duration of the flight; result in increased cost that would offset transportation savings; or offer accommodations not reasonably adequate for the medical needs of the traveler. Where an institution can reasonably demonstrate to the sponsoring agency either the nonavailability of discount airfare or Government contract airfare for individual trips or, on an overall basis, that it is the institution's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Government, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the institution must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. *Air travel by other than commercial carrier.* "Cost of travel by institution-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. Costs of travel via institution-owned, -leased, or -chartered aircraft shall not exceed the cost of allowable commercial air travel, as provided for in section c above.

28. The following new section 50 is added to section J:

50. *Trustees.* Travel and subsistence costs of trustees, regardless of the purpose of the trip, are unallowable.

29. Section K is amended by renumbering the existing text as 1 and adding a new subsection 2 as follows:

2. Certification of indirect costs.

a. *Policy.*

(1) No proposal to establish indirect cost rates shall be acceptable unless such costs have been certified by the educational institution using the Certificate of Indirect Costs set forth in paragraph b below. The certificate must be signed on behalf of the institution by an individual at a level no lower than vice president or chief financial officer of the institution that submits the proposal.

(2) No indirect cost rate shall be binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government shall unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When indirect cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

b. *Certificate.* The certificate required by this section shall be in the following form:

Certificate of Indirect Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under applicable cost principles such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare under penalty of perjury that the foregoing is true and correct.

Institution:_____
Signature: _____
Name of Official:_____
Title: _____
Date of Execution: _____

30. The following Exhibit is added:

Exhibit A—List of Colleges and Universities Subject to Section J.9.F of Circular A–21

1. Johns Hopkins University
2. Stanford University
3. Massachusetts Institute of Technology
4. University of Washington
5. University of California—Los Angeles
6. University of Michigan
7. University of California—San Diego
8. University of California—San Francisco
9. University of Wisconsin—Madison
10. Columbia University
11. Yale University
12. Harvard University
13. Cornell University
14. University of Pennsylvania
15. University of California—Berkeley
16. University of Minnesota
17. Pennsylvania State University
18. University of Southern California
19. Duke University
20. Washington University
21. University of Colorado
22. University of Illinois—Urbana
23. University of Rochester
24. University of North Carolina—Chapel Hill
25. University of Pittsburgh
26. University of Chicago
27. University of Texas—Austin
28. University of Arizona
29. New York University
30. University of Iowa
31. Ohio State University
32. University of Alabama—Birmingnam
33. Case Western Reserve
34. Baylor College of Medicine
35. California Institute of Technology
36. Yeshiva University
37. University of Massachusetts
38. Vanderbilt University
39. Purdue University
40. University of Utah
41. Georgia Institute of Technology
42. University of Maryland—College Park
43. University of Miami
44. University of California—Davis
45. Boston University
46. University of Florida

47. Carnegie-Mellon University
48. Northwestern University
49. Indiana University
50. Michigan State University
51. University of Virginia
52. University of Texas—SW Medical Center Dallas
53. University of California—Irvine
54. Princeton University
55. Tulane University of Louisiana
56. Emory University
57. University of Georgia
58. Texas A & M University—all campuses
59. New Mexico State University
60. North Carolina State University—Raleigh
61. University of Illinois—Chicago
62. Utah State University
63. Virginia Commonwealth University
64. Oregon State University
65. SUNY—Stony Brook
66. University of Cincinnati
67. CUNY—Mount Sinai School of Medicine
68. University of Connecticut
69. Louisiana State University
70. Tufts University
71. University of California—Santa Barbara
72. University of Hawaii—Manoa
73. Rutgers State University of New Jersey
74. Colorado State University
75. Rockefeller University
76. University of Maryland—Baltimore
77. Virginia Polytechnic Institute & State University
78. SUNY—Buffalo
79. Brown University
80. University of Medicine & Dentistry of New Jersey
81. University of Texas—Health Science Center San Antonio
82. University of Vermont
83. University of Texas—Health Science Center Houston
84. Florida State University
85. University of Texas—Md Anderson Cancer Center
86. University of Kentucky
87. Wake Forest University
88. Wayne State University
89. Iowa State University of Science & Technology
90. University of New Mexico
91. Georgetown University
92. Dartmouth College
93. University of Kansas
94. Oregon Health Sciences University
95. University of Texas—Medical Branch—Galveston
96. University of Missouri—Columbia
97. Temple University
98. George Washington University
99. University of Dayton

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Reader Aids

Federal Register

Vol. 56, No. 192

Thursday, October 3, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6340.....49661
6341.....49663
6342.....49665
6343.....50003
6344.....50029

Executive Orders:
October 9, 1917
Revoked in part by PLO 6885.....50059
11145 (Continued by EO 12774).....49835
11183 (Continued by EO 12774).....49835
11287 (Continued by EO 12774).....49835
11776 (Continued by EO 12774).....49835
12131 (Continued by EO 12774).....49835
12196 (Continued by EO 12774).....49835
12216 (Continued by EO 12774).....49835
12345 (Continued by EO 12774).....49835
12367 (Continued by EO 12774).....49835
12382 (Continued by EO 12774).....49835
12658 (Revoked by EO 12774).....49835
12661 (Partially revoked by EO 12774).....49835
12686 (Revoked by EO 12774).....49835
12692 (Superseded by EO 12774).....49835

Administrative Orders:
No. 91-46 of July 13, 1991 (See Presidential Determination No. 91-53).....49837
No. 91-53 of September 16, 1991.....49837

Memorandums:
October 1, 1991.....50031

7 CFR

932.....49667
944.....49669

8 CFR

103.....49671
212.....50033
245.....49839
299.....49671
392.....49671
499.....49671

10 CFR

13.....49945

12 CFR

338.....50034

13 CFR

121.....49672, 49841

14 CFR

39.....50042, 50048
71.....49842-49844

Proposed Rules:
71.....49855, 50066

17 CFR

Proposed Rules:
4.....50067

18 CFR

Proposed Rules:
284.....50072

19 CFR

10.....49844

20 CFR

404.....50157
422.....50157

21 CFR

175.....49673
176.....49673
510.....49845
558.....49846, 50049

22 CFR

42.....49675-49678
43.....49821

Proposed Rules:
41.....49729-49821

24 CFR

91.....49683
235.....49683

26 CFR

301.....49684

28 CFR

68.....50049

Proposed Rules:
11.....49729
32.....50160

30 CFR

Proposed Rules:
935.....49856

31 CFR

515.....49846

32 CFR

290.....49685
295.....49693

33 CFR

117.....49705

36 CFR

327.....49706

Proposed Rules:

254.....49948

38 CFR

Proposed Rules:

21.....49735

40 CFR

52.....50172

Proposed Rules:

52.....49857
88.....50196
185.....50190
228.....49858
764.....49863

42 CFR

400.....50058
406.....50058
407.....50058

43 CFR

Public Land Orders:

6831 (Corrected by PLO 6885.....50059
6883.....50058
6884.....49847
6885.....50059

Proposed Rules:

2090.....49962
2200.....49962

45 CFR

402.....49706
1160.....49848

46 CFR

28.....49822

47 CFR

73.....49707
76.....49707

Proposed Rules:

90.....49875

48 CFR

Proposed Rules:

503.....50073
552.....50073

49 CFR

171.....49831, 49980
172.....49980
173.....49980
174.....49980
1105.....49821
1152.....49821

50 CFR

17.....49850
23.....49708, 50059
204.....50061
285.....50061
642.....49853
651.....50063
663.....49727, 50063
672.....50157

Proposed Rules:

17.....50075
611.....50084
663.....50084

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 22, 1991